



**FLYNET LIMITED**

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**STANDARD TERMS AND CONDITIONS**

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Flynet Limited  
King William House  
The Causeway  
Burwell  
Cambridge  
CB25 0DU

## FLYNET LIMITED

### STANDARD TERMS AND CONDITIONS

IT IS HEREBY AGREED AS FOLLOWS:

The following schedules are included herein by reference as integral parts of this Agreement and are available on request.

- Schedule A End User Software Licence Agreement
- Schedule B Software Support and Maintenance Agreement
- Schedule C Training Services Agreement
- Schedule D Consultancy Services Agreement

#### 1 Definitions.

- 1.1 "Consultancy" shall mean those customisation, integration or any other services provided by Flynet in accordance with the terms of the Consultancy Services Agreement at Schedule D;
- 1.2 "Delivered" or "Delivery" shall mean physical delivery of the Software or Services;
- 1.3 "Documentation" shall mean any user, operations and training manuals provided by Flynet;
- 1.4 "Price List" shall mean Flynet's then current price list;
- 1.5 "Purchase Order" shall mean the Purchase Order accepted by Flynet from Customer;
- 1.6 "Services" shall mean all Consultancy, Training and Maintenance services purchased by Customer from Flynet relating to the Software;
- 1.7 "Software" means any software in machine-readable object code form (and related Documentation) provided under this Agreement;
- 1.8 "Support" shall mean the customer support and maintenance services as described in Schedule B;
- 1.9 "Terms and Conditions" shall mean these Terms and Conditions as amended from time to time in writing;
- 1.10 "Training" shall mean those training services provided by Flynet in accordance with Schedule C hereto.

#### 2 Scope of Agreement

- 2.1 Any schedule attached hereto is hereby incorporated by reference into these Terms and Conditions. In the event of any conflict between these Terms and Conditions and the terms of a schedule, the terms of the schedule shall apply.
- 2.2 These Terms and Conditions together with any schedule constitute the entire agreement of the parties, and all other communications, warranties (whether express or implied), representations, understandings or agreements with respect to the subject matter hereof are specifically excluded. These Terms and Conditions (and any schedule) may be modified only by written agreement signed by a director of Flynet. All Purchase Orders for Software will be subject to the terms of these Terms and Conditions and any applicable schedule and any Customer terms in any Purchase

Order, which are inconsistent with these Terms and Conditions and any schedule, shall be null and void. Flynet shall have no obligation to accept all or any Purchase Orders.

### **3 Software Supply.**

- 3.1 Flynet will supply to Customer (subject to the trademark and/or copyright of Flynet and/or its suppliers) the Software on the terms set out in these Terms and Conditions, the terms of any schedule and the terms of the applicable licence agreement supplied with the Software.
- 3.2 In the event of a physical shipment the Software will be despatched to Customer's premises by a carrier of Flynet's choice. Customer shall reimburse Flynet for any costs incurred in shipping the Software, including but without limitation any transportation charges, shipping insurance and duties and shall be responsible for any and all taxes, import or export fees, excise duties and withholding taxes arising from use of the Software. Risk in the Software will pass to Customer on deposit by Flynet with the carrier.
- 3.3 In the event of an electronic shipment the Software will be delivered to the Customer by Flynet providing the necessary access rights (URL/IP address and password) to enable download of the Software by the Customer directly to the Customer's host computer.
- 3.4 Upon payment of the applicable fees Flynet will provide the Customer with the necessary instructions or device to enable the Software ('Licence Key').

### **4 Price and Payment.**

- 4.1 Customer will pay Flynet the appropriate price for the Software and/or fees for the Services as set out in the Price List, together with relevant shipping costs.
- 4.2 All sums referred to in Clause 4.1 shall be payable within 30 days of invoice date unless otherwise specified in the Price List or in any schedule.
- 4.3 Past due amounts owed by the Customer shall bear interest at the rate of 1.5% per month or at 8% above the Bank of England base rate (in accordance with the Late Payment of Commercial Debts Act 1998), whichever is the greater. Customer shall reimburse Flynet for all reasonable costs incurred in the collection of past due amounts owed by Customer.
- 4.4 Purchase prices and fees stated by Flynet are net of VAT. The relevant VAT and any future relevant taxes or tariffs not currently in force will be paid to Flynet by Customer.

### **5 Cancellation.**

- 5.1 Any cancellation of a Purchase Order or part thereof may result in loss to Flynet for which Customer will be liable.
- 5.2 No cancellation will be accepted if it is received by Flynet less than 5 working days prior to Delivery or commencement of services.
- 5.3 In the event of cancellation of all or any part of a Purchase Order for any Software or Services more than 5 working days prior to scheduled Delivery or commencement of services, Customer will pay an amount equal to 50% of the amount that would have been invoiced for the Software or Services.
- 5.4 In the event of cancellation of all or any part of a Purchase Order for Training Services 14 days prior to scheduled Delivery, Customer will pay an amount equal to 50% of the amount that would

have been invoiced for such Services. In the event of cancellation of all or any part of a Purchase Order for Training Services 7 days prior to scheduled Delivery, Customer will pay an amount equal to 75% of the amount that would have been invoiced for such Services.

5.5 The cancellation fees in 5.3 and 5.4 above are acknowledged to be a genuine pre-estimate of the loss involved to Flynet.

## **6 Documentation.**

6.1 A set of Documentation will be provided with the Software as specified in the Price List.

6.2 Customer shall not copy all or any part of the Documentation. Additional copies of Documentation may be purchased at Flynet's current prices from time to time.

## **7 Training and Consultancy.**

7.1 Training at Flynet's training centres or at Customer's site is provided as specified in the Price List. No credit is given for courses not taken. Additional Training may be purchased at prices stated in the Price List.

7.2 Customer shall not copy or disclose all or part of any Documentation, training material or user guides provided by Flynet or its suppliers. Additional copies may be obtained at Flynet's then current prices for use under these Terms and Conditions.

7.3 Whilst attending Training courses at Flynet's premises, Customer shall abide by any Health and Safety Regulations and other reasonable instructions of Flynet.

7.4 In the event Flynet provides on-site Training or Consultancy at Customer's premises, Customer shall provide all necessary services and observe the provisions of the Health and Safety at Work Act 1974, the Control of Substances Hazardous to Health and all other relevant legislation and reasonable requirements of Flynet.

## **8 Copyright and Intellectual Property.**

8.1 No right title or interest in any copyright, patent or other intellectual property right in any of the Software shall pass to or vest in Customer.

8.2 Customer shall ensure that all copyright notices on any Software shall not be deleted and shall be accurately reproduced on all copies of the same.

8.3 Unless otherwise agreed in writing, all intellectual property rights relating to or connected with the provision of the Software or the Services shall automatically vest in Flynet or its licensors and the Customer undertakes to execute such documentation as may be necessary to perfect the title of Flynet or its licensors to such rights.

## **9 Confidentiality.**

9.1 "Confidential Information" includes all Software, Training material, the output of any Consultancy Services, all related documents, plus all information reasonably identified by the disclosing party as confidential.

9.2 No right title or interest in any of the Confidential Information shall pass to the receiving party except as specified in this Agreement.

- 9.3 Each party shall hold the Confidential Information of the other in strict confidence, will not make any disclosures (including methods or concepts utilised in the Confidential Information) without the express written consent of the other, except to employees or agents to whom disclosure is necessary for the performance of these Terms and Conditions and who undertake to take all reasonable steps to ensure the confidentiality of all Confidential Information.
- 9.4 Customer acknowledges its obligations in respect of Flynet's or its suppliers' copyright in the Software, any upgrades to the Software and the Confidential Information give particular value and agrees that any breach of these Terms and Conditions and/or any schedule relating to these matters may result in irreparable and continuing damage to Flynet or its suppliers for which there will be no adequate remedy in damages and in the event of such breach, Flynet or its suppliers will be entitled to injunctive relief and/or a decree for specific performance and such further relief as may be proper.
- 9.5 On the termination of these Terms and Conditions, on written request, each party shall return within 10 business days all originals and copies of Confidential Information disclosed by the other.
- 9.6 Each party's obligations under this Clause 9 shall survive termination of these Terms and Conditions for a period of three years following such termination save in respect of Software where the obligation of confidentiality shall be in perpetuity.

## **10 Warranty and Limitation of Liability.**

- 10.1 EXCEPT AS PROVIDED IN THE APPLICABLE SCHEDULE, FLYNET MAKES NO EXPRESS OR IMPLIED WARRANTY WITH RESPECT TO THE SOFTWARE OR SERVICES TO BE SUPPLIED BY FLYNET, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OR CONDITION OF SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, EXCEPT TO THE EXTENT THAT SUCH DISCLAIMERS ARE SPECIFICALLY HELD TO BE LEGALLY INVALID. FLYNET DOES NOT WARRANT THAT THE SOFTWARE OR SERVICES WILL BE ERROR-FREE, OR THAT ANY DEFECTS THAT MAY EXIST IN THE SOFTWARE WILL BE CORRECTED. CUSTOMER ACKNOWLEDGES THAT FLYNET HAS MADE NO REPRESENTATIONS REGARDING WARRANTY OR PERFORMANCE OR CAPABILITY.
- 10.2 IN NO EVENT SHALL FLYNET BE LIABLE FOR ANY LOSS OF PROFITS, BUSINESS, USE, DATA OR INFORMATION OR FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES WHATSOEVER INCLUDING BUT NOT LIMITED TO DAMAGES RESULTING FROM LOSS OF USE, LOSS OF ANTICIPATED SAVINGS OR LOST DATA EVEN IF FLYNET HAS BEEN ADVISED, KNEW, OR SHOULD HAVE KNOWN OF THE POSSIBILITY THEREOF, OR FOR ANY CLAIM BY ANY THIRD PARTY.
- 10.3 Customer agrees that Flynet's liability under these Terms and Conditions and any schedules in contract or tort shall not exceed the lesser of the fees (if any) paid by Customer in the preceding twelve months or £500,000. This limitation shall not apply to death or personal injury caused by Flynet's negligence or any other liability that by law can not be limited.
- 10.4 The operation of this Clause 10 shall survive the termination of these Terms and Conditions.

## **11 Customer Indemnity.**

- 11.1 Customer shall indemnify Flynet its licensors, agents and employees against all costs, loss, liability and expense arising from
- 11.1.1 any claims against or incurred by Flynet in connection with the use of Software by Customer's agents and employees; and

- 11.1.2 any claims relating to use by Customer or its customers of any product not provided by Flynet but used in conjunction with the Software if such claims for damages would have been avoided by the exclusive use of the Software.

## **12 Term/Termination.**

- 12.1 These Terms and Conditions and any schedule(s) shall take immediate effect on signature and shall remain in force until terminated as provided below or as may be additionally provided for in any schedule.
- 12.2 Either party may at its option terminate these Terms and Conditions by written notice:
  - 12.2.1 immediately should the other party commit any act of bankruptcy (or any act which in the case of an individual would constitute an act of bankruptcy); or
  - 12.2.2 where not remediable, on breach by the other party of these Terms and Conditions; or
  - 12.2.3 where remediable if any breach by the other party of these Terms and Conditions is not corrected within 30 days of written notice.
- 12.3 On expiry or termination of these Terms and Conditions, all licences granted to Customer pursuant hereto shall terminate and Customer shall cease using the Software. On termination, each party shall return and make no further use of property, materials and other items (and all copies thereof) belonging to the other.
- 12.4 Termination of these Terms and Conditions or any schedule shall not prejudice either party's accrued rights and shall not limit either party from pursuing any other remedies available to it. In particular, termination shall not relieve Customer of its obligation to pay all fees accruing prior to such termination.

## **13 General**

- 13.1 Neither these Terms and Conditions nor any schedule may be assigned, sublicensed or otherwise transferred without Flynet's prior written consent.
- 13.2 If one or more provisions of these Terms and Conditions or any applicable schedule are held to be illegal or unenforceable under applicable law, such illegal or unenforceable provisions shall be limited or excluded from this Agreement or such schedule to the minimum extent required so that this Agreement together with its schedules shall otherwise remain in full force and effect and enforceable in accordance with its terms.
- 13.3 The failure or delay by either party to enforce any term of these Terms and Conditions or the terms of any schedule shall not be deemed a waiver of such term.
- 13.4 The Customer shall not either during the period of performance of the Services or for a period of six months thereafter whether alone or jointly with or as principal, partner, agent, director, servant or consultant of any other person, firm or corporation directly or indirectly endeavour to entice away from Flynet or employ any person who at any time during such period shall have been an employee or director of Flynet. In the event of Customer breaking the terms of this clause, Customer shall pay Flynet the higher of either the equivalent of 12 months gross salary (plus all tangible benefits) offered to the former Flynet employee or director by Customer or 12 months gross salary paid by Flynet over the preceding period. Such sum being agreed as fair and reasonable recompense for the disruption caused to Flynet.

- 13.5 A party who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Agreement.
- 13.6 Customer agrees to Flynet issuing a press release regarding the subject matter of this Agreement and Customer agrees to act as a reference site for Flynet and to take up to four reference calls from potential customers in any twelve month period.
- 13.7 These Terms and Conditions and the terms and conditions of any schedule are subject to any governmental laws, orders or other restrictions ("Export Requirements") on the export of Software and related information and documents which may be applicable to Flynet or its suppliers which may be imposed from time to time by the governments of the United States of America or the United Kingdom. Customer will not commit any act or omission, which will result in a breach of any such Export Requirements.
- 13.8 No delay, failure or default in performance of an obligation hereunder shall constitute a breach or these Terms and Conditions or of the terms and conditions of any schedule to the extent caused by force majeure.
- 13.9 All notices shall be in writing and delivered by hand or sent by first class prepaid mail to the above address of the other party or as otherwise notified and shall be deemed received on the earlier of actual receipt or five days after deposit in the mail.
- 13.10 These Terms and Conditions and any schedule(s) shall be governed by and construed under the laws of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England.