

THIS AGREEMENT is made between FLY MY CLOUD, a company incorporated and registered in England and Wales with company number 09756179 whose registered office is at 71-75 Shelton Street, Covent Garden London UK WC2H 9JQ (**FMC**) and the entity agreeing to these terms (**the Customer**). **These Terms and Conditions for Software as a Service (SaaS) are an addendum to the website terms and conditions available at www.flymycloud.com**

BACKGROUND

- (A) FMC has developed certain software applications and platforms which it makes available to subscribers via the internet on a pay-per-use basis for a wide range of purposes including client management and payment processing
- (B) The Customer wishes to use FMC's service in its business operations.
- (C) FMC has agreed to provide and the Customer has agreed to take and pay for FMC's services subject to the terms and conditions of this agreement.

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Authorised Users: those clients, employees, agents, the Customer's clients and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation, as further described in clause 2.3(d).

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

Change of Control: the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and **controls, controlled** and the expression **change of control** shall be construed accordingly.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 11.5.

Customer Data: the data inputted by the Customer, Authorised Users, or FMC on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

Documentation: the document made available to the Customer by FMC online via www.flymycloud.com or www.bizzybud.com or such other web address notified by FMC to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.

Effective Date: the date Customer clicks to accept the Agreement.

Initial Subscription Term: the initial term of this agreement as set out in Schedule 1.

Normal Business Hours: 10.00 am to 6.00 pm local UK time, each Business Day.

Renewal Period: the period described in clause 16.1.

Services: the subscription services provided FMC to the Customer under this agreement via www.flymycloud.com and www.bizzybud.com or any other website notified to the Customer by FMC from time to time, as more particularly described in the Documentation.

Software: the online software applications provided by FMC as part of the Services.

Subscription Fees: the subscription fees payable by the Customer to FMC for the User Subscriptions, as set out at www.flymycloud.com .

Subscription Term: has the meaning given in clause 16.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

User Subscriptions: the user subscriptions purchased by the Customer pursuant to clause 9 which entitle Authorised Users to access and use the Services and the Documentation in accordance with this agreement.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
- 1.9 A reference to writing or written does not include faxes but does include e-mail.
- 1.10 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.

2. USER SUBSCRIPTIONS

- 2.1 The Customer accepts sole responsibility for ensuring that it has appropriate agreements in place with the Authorised Users for the usage of the Customer's products and/or services. FMC does not accept liability for any losses incurred as a result of the Customer's failure to make appropriate contractual arrangements with the Customer's Authorised Users.
- 2.2 Subject to the Customer purchasing the User Subscriptions in accordance with clause 3.3 and clause 9, the restrictions set out in this clause 2 and the other terms and conditions of this agreement, FMC hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Services and the Documentation (if applicable) during the Subscription Term solely for the Customer's business operations.
- 2.3 In relation to the Authorised Users, the Customer undertakes that:
- (a) the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;
 - (b) it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;
 - (c) each Authorised User shall keep a secure password for his use of the Services and Documentation, that such password shall be changed by the Authorised User no less frequently than every 90 days and that each Authorised User shall keep his password confidential;

- (d) it shall maintain a written, up to date list of current Authorised Users and provide such list to FMC within 5 Business Days of FMC's written request at any time or times;
- (e) it shall permit FMC to audit the Services in order to establish the name and password of each Authorised User. Such audit may be conducted no more than once per quarter, at FMC's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
- (f) if any of the audits referred to in clause 2.3(e) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to FMC's other rights, the Customer shall promptly disable such passwords and FMC shall not issue any new passwords to any such individual; and
- (g) if any of the audits referred to in clause 2.3(e) reveal that the Customer has underpaid Subscription Fees to FMC, then without prejudice to FMC's other rights, the Customer shall pay to FMC an amount equal to such underpayment as calculated in accordance with the prices set out on the website (www.flymycloud.com or www.bizzybud.com) within 7 Business Days of the date of the relevant audit. FMC reserves the right to levy an additional fee for reasonable costs incurred in the event of an underpayment by the Customer.

2.4 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) in a manner that is otherwise illegal or causes damage or injury to any person or property;

and FMC reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

2.5 The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
 - (i) and except to the extent expressly permitted under this agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
- (c) use the service for any other purposes than what it is intended for; or
- (d) attempt to circumvent the security arrangements or limitations placed on the use of the software; or
- (e) use the Services and/or Documentation to provide services to third parties; or
- (f) subject to clause 24.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
- (g) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2; and

2.6 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify FMC.

2.7 The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

2.8 FMC reserves the right to cancel the Customer's subscriptions and terminate the service for breach of this clause 2 and charge the Customer for any costs incurred by FMC for breach of this clause 2.

3. ADDITIONAL USER SUBSCRIPTIONS

3.1 Subject to clause 3.2 and clause 3.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in paragraph 2 of **Error! Reference source not found.** and FMC shall grant

access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of this agreement.

- 3.2 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify FMC in writing. FMC shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or rejection of the request.
- 3.3 If FMC approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within 7 days of the date of FMC's invoice, pay to FMC the relevant fees for such additional User Subscriptions as set out in paragraph **Error! Reference source not found.** of **Error! Reference source not found.** and, if such additional User Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

4. SERVICES

- 4.1 FMC shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this agreement.
- 4.2 FMC shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- (a) planned maintenance carried out during the maintenance window of 6.00 pm to 8.00 pm UK time; and
 - (b) urgent maintenance performed at any time of day provided that FMC has provided prior warning to the Customer.
- 4.3 FMC will, as part of the Services and at no additional cost to the Customer, provide the Customer with FMC's standard customer support services. FMC will use reasonable endeavours to deal with support queries within 48 hours of receipt of support requests from the Customer via the support function on the website or via email to support@flymycloud.com. FMC may amend its support service response times and methods by which Customers can request support in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at FMC's then current rates.

5. CUSTOMER DATA

- 5.1 The Customer shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

- 5.2 FMC is under no obligation to back-up or archive Customer Data. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for FMC to use reasonable commercial endeavours to restore the lost or damaged Customer Data where possible. FMC shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party. The Customer may purchase enhanced data back-up services separately at FMC's then current rates.
- 5.3 FMC shall, in providing the Services, comply with its Privacy Policy relating to the privacy of the Customer Data available at www.flymycloud.com or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by FMC in its sole discretion.
- 5.4 If FMC processes any personal data on the Customer's behalf when performing its obligations under this agreement, the parties record their intention that the Customer shall be the data controller and FMC shall be a data processor and in any such case:
- (a) the Customer acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to carry out the Services and FMC's other obligations under this agreement;
 - (b) the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to FMC so that FMC may lawfully use, process and transfer the personal data in accordance with this agreement on the Customer's behalf;
 - (c) the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
 - (d) FMC shall process the personal data only in accordance with the terms of this agreement and any lawful instructions reasonably given by the Customer from time to time; and
 - (e) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

6. THIRD PARTY PROVIDERS

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. FMC makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction

completed via any third-party website is between the Customer and the relevant third party, and not FMC. FMC recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. FMC does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

7. FMC'S OBLIGATIONS

7.1 FMC undertakes that the Services will be performed substantially in accordance with the Documentation (if applicable) and with reasonable skill and care.

7.2 The undertaking at clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to FMC's instructions, or modification or alteration of the Services by any party other than FMC or FMC's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, FMC will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 7.1. Notwithstanding the foregoing, FMC:

- (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements;
- (b) is not responsible for any loss of data or downtime due to an issue with a third party provider FMC is relying on; and
- (c) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

7.3 This agreement shall not prevent FMC from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.

7.4 FMC warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

8. CUSTOMER'S OBLIGATIONS

The Customer shall:

- (a) provide FMC with:
 - (i) all necessary co-operation in relation to this agreement; and
 - (ii) all necessary access to such information as may be required by FMC;

in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
- (b) comply with all applicable laws and regulations with respect to its activities under this agreement;
- (c) carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, FMC may adjust any agreed timetable or delivery schedule as reasonably necessary and the Customer may be billed during this time if a subscription is active;
- (d) ensure that the Authorised Users use the Services and the Documentation (if applicable) in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this agreement;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for FMC, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;
- (f) ensure that its network and systems comply with the relevant specifications provided by FMC from time to time; and
- (g) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to FMC's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

9. CHARGES AND PAYMENT

- 9.1 The Customer shall pay the Subscription Fees to FMC for the User Subscriptions in accordance with this clause 9 and the service selected by the Customer from FMC's website www.flymycloud.com or www.bizzybud.com or any other website notified to the Customer by FMC from time to time, as more particularly described in the Documentation.
- 9.2 The Customer shall on the day of purchase of a subscription plan provide to FMC valid, up-to-date and complete debit or credit card details or approved purchase order information acceptable to FMC and any other relevant valid, up-to-date and complete contact and billing details and, if the Customer provides:
 - (a) its debit or credit card details to FMC, the Customer hereby authorises FMC to bill such debit or credit card:

- (i) on the date for the Subscription Fees payable in respect of the Initial Subscription Term; and
 - (ii) subject to clause 16.1, on each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period;
 - (b) its approved purchase order information to FMC, FMC shall invoice the Customer:
 - (i) on the due date for the Subscription Fees payable in respect of the Initial Subscription Term; and
 - (ii) subject to clause 16.1, at least 30 days prior to each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period,
- and the Customer shall pay each invoice within 7 days after the date of such invoice.

9.3 If FMC has not received payment within 7 days after the due date, and without prejudice to any other rights and remedies of FMC:

- (a) FMC may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and FMC shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
- (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 7% over the then current base lending rate of FMC's bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

9.4 All amounts and fees stated or referred to in this agreement:

- (a) shall be payable in pounds sterling;
- (b) are, subject to clause 14.4(b), non-cancellable and non-refundable;
- (c) are exclusive of value added tax, which shall be added to FMC's invoice(s) at the appropriate rate.

9.5 If, at any time whilst using the Services, the Customer exceeds the amount of disk storage space, CPU power, bandwidth, and / or RAM specified in the clause 13.2, FMC shall charge the Customer, and the Customer shall pay, FMC's then current excess data storage fees, excess CPU usage fee, bandwidth usage fee, and /or excess RAM usage fee. FMC's excess data storage fees current as at the Effective Date are set out in **Error! Reference source not found.**

- 9.6 FMC shall be entitled to increase the Subscription Fees, the fees payable in respect of the additional User Subscriptions purchased pursuant to clause 3.3 and/or the excess storage fees payable pursuant to clause 9.5 at the start of each Renewal Period upon 7 days' prior notice to the Customer. Schedule 1 shall be deemed to have been amended accordingly.
- 9.7 The Customer acknowledges and agrees that FMC and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, this agreement does not grant the Customer any rights to, or in, patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.
- 9.8 FMC confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

10. PAYMENT PROCESSING

- 10.1 FMC is authorised to utilise a payment processing organisation of its choosing to undertake payment processing functions and is under no obligation to consult the Customer.
- 10.2 By utilising FMC's payment processing features the Customer authorises FMC to collect payment from the Customer's clients (**the Clients**) using FMC's payment processing software on behalf of the Customer. The sums collected from the Clients will be credited to the Customer's nominated account within 10 Business Days. Where payment is delayed due to technical difficulties FMC undertakes to notify the Customer within a reasonable time period as to the reason for the delay and will utilise its best endeavours to remit the sums owed to the Customer as soon as practicable.
- 10.3 The Customer is responsible for ensuring the accuracy of their payment details in order to enable payments to be credited to the Customer's account. FMC is not liable for any losses, whether direct or indirect, resulting from the Customer's failure to provide accurate payment information to FMC.
- 10.4 In the event that FMC is responsible for a charging error or a shortfall in payment FMC will use its best endeavours to recover the difference between the sums collected and the sums owed by the Clients.
- 10.5 In the event that a Client raises a complaint regarding a deduction from their account FMC reserves the right levy to a processing charge of £25.00 pending resolution of

the dispute. The If the Client's complaint is upheld will the fee of £25.00 will be refunded to the Client in full. It is he Customer's responsibility to resolve disputes with their Clients in a timely fashion. In the event that the dispute is not resolved within a reasonable time period FMC reserves the right to refund the £25.00 fee to the Client in full.

- 10.6 It is the Customer's responsibility to ensure that the correct charging information for their products is provided.
- 10.7 It is the Customer's responsibility to verify that the sums paid to them correspond with the products/services they are providing and charging for on their website.

11. CONFIDENTIALITY

- 11.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
 - (b) was in the other party's lawful possession before the disclosure;
 - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 11.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.
- 11.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.
- 11.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 11.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute FMC's Confidential Information.

- 11.6 FMC acknowledges that the Customer Data is the Confidential Information of the Customer.
- 11.7 This clause 11 shall survive termination of this agreement, however arising.
- 11.8 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

12. INDEMNITY

- 12.1 The Customer shall defend, indemnify and hold harmless FMC against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:
- (a) the Customer is given prompt notice of any such claim;
 - (b) FMC provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
 - (c) the Customer is given sole authority to defend or settle the claim.
- 12.2 FMC shall defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
- (a) FMC is given prompt notice of any such claim;
 - (b) the Customer provides reasonable co-operation to FMC in the defence and settlement of such claim, at FMC's expense; and
 - (c) FMC is given sole authority to defend or settle the claim.
- 12.3 In the defence or settlement of any claim, FMC may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 12.4 In no event shall FMC, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

- (a) a modification of the Services or Documentation by anyone other than FMC; or
- (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by FMC; or
- (c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from FMC or any appropriate authority.

12.5 The foregoing and clause 14.4(b)] state the Customer's sole and exclusive rights and remedies, and FMC's (including FMC's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

13. FAIR USE POLICY

13.1 The Customer may not use the Service in any way that would disrupt, impair, or interfere with FMC's servers or with other customers' use and enjoyment of the Service. This includes, but is not limited to, employing applications such that consume excessive CPU time, memory (RAM) or storage space and excessive streaming of media.

13.2 FMC considers that the following limits are acceptable for each of the plans listed on its website – 1 GB disk space, 30 MB RAM, 30 MB RAM for database, 1 GB of bandwidth.

13.3 If, at any time whilst using the Services, the Customer exceeds the amount of disk storage space specified in the Documentation, FMC shall charge the Customer, and the Customer shall pay, the Supplier's then current excess data storage fees. The Supplier's excess data storage fees current as at the Effective Date are set out in Schedule ___ of this Agreement

14. LIMITATION OF LIABILITY

14.1 This clause 13.3 sets out the entire financial liability of FMC (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:

- (a) arising under or in connection with this agreement;
- (b) in respect of any use made by the Customer of the Services and Documentation (if provided) or any part of them; and
- (c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.

14.2 Except as expressly and specifically provided in this agreement:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. FMC shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to FMC by the Customer in connection with the Services, or any actions taken by FMC at the Customer's direction;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
- (c) the Services and the Documentation are provided to the Customer on an "as is" basis.

14.3 Nothing in this agreement excludes the liability of FMC:

- (a) for death or personal injury caused by FMC's negligence; or
- (b) for fraud or fraudulent misrepresentation.

14.4 Subject to clause 14.2 and clause 14.3:

- (a) FMC shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and
- (b) FMC's total aggregate liability in contract (including in respect of the indemnity at clause 12.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to £[5.

15. SUSPENSION

15.1 FMC reserves the right to suspend the service by giving written notice to the Customer if the customer fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment. FMC is not obliged to suspend the service in the event of default and is entitled to terminate the service in accordance with clause 14.2 of this agreement on 7 days' notice where the customer has defaulted on two occasions in any 6-month period.

16. TERM AND TERMINATION

16.1 This agreement shall, unless otherwise terminated as provided in this clause 16, commence on the Effective Date and shall continue for the Initial Subscription Term

and, thereafter, this agreement shall be automatically renewed for successive periods of 30 days (each a **Renewal Period**), unless:

- (a) either party notifies the other party of termination, in writing, at least 7 days before the end of the Initial Subscription Term or any Renewal Period, in which case this agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
- (b) otherwise terminated in accordance with the provisions of this agreement;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

16.2 Without affecting any other right or remedy available to it, FMC may terminate this agreement with immediate effect by giving written notice to the Customer if the customer fails to pay any amount due under this agreement on the due date for payment and remains in default following suspension of the services in accordance with clause 13.1 and 7 days after being notified in writing to make such payment;

16.3 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified in writing to do so;
- (b) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- (f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- (g) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 16.3(c) to clause 16.3(i) (inclusive);
- (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (l) there is a change of control of the other party.

16.4 On termination of this agreement for any reason:

- (a) all licences granted under this agreement shall immediately terminate;
- (b) each party shall return and make no further use of any equipment, property, Documentation (if provided) and other items (and all copies of them) belonging to the other party;
- (c) FMC may destroy or otherwise dispose of any of the Customer Data in its possession any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

17. FORCE MAJEURE

FMC shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of FMC or any other party), failure of a utility service or transport or telecommunications network, service disruption or downtime caused by third party providers engaged by FMC, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default

of FMCs or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

18. CONFLICT

If there is an inconsistency between any of the provisions in the main body of this agreement and the Schedules, the provisions in the main body of this agreement shall prevail.

19. VARIATION

(a) To the Services: FMC may make commercially reasonable updates to the Services from time to time. If FMC makes a material change to the Services, FMC will inform the Customer, provided that the Customer has subscribed with FMC to be informed about such change.

(b) To the Agreement: FMC may make changes to this Agreement, including pricing (and any linked documents) from time to time. Unless otherwise noted by FMC, material changes to the Agreement will become effective 30 days after they are posted, except if the changes apply to new functionality in which case they will be effective immediately. If the Customer does not agree to the revised Agreement, please stop using the Services. FMC will post any modification to this Agreement to the Terms URL.

20. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

21. RIGHTS AND REMEDIES

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

22. SEVERANCE

22.1 If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

22.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

23. ENTIRE AGREEMENT

23.1 This agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

23.2 Each of the parties acknowledges and agrees that in entering into this agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement, other than as expressly set out in this agreement.

24. ASSIGNMENT

24.1 The Customer shall not, without the prior written consent of FMC, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

24.2 FMC may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

25. NO PARTNERSHIP OR AGENCY

Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

26. THIRD PARTY AGREEMENTS

26.1 By agreeing to these terms the Customer also accepts the terms and conditions of the third party service providers engaged by FMC in order to provide the Service. They are listed below. It is the Customer's responsibility to consider the terms and conditions of each provider (the links to which are provided in this document) prior to accepting these terms and conditions:

- a) Google Cloud Terms and Conditions;
- b) Amazon AWS Terms and Conditions;; and
- c) Stripe Terms and Conditions;.

27. THIRD PARTY RIGHTS

Subject to clause 26 this agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

28. NOTICES

28.1 Any notice required to be given under this agreement shall be in writing and shall be by email. FMC will use the email provided by the Customer during the signup for serving notices and the Customer may be use legal-notices@flymycloud.com.

29. GOVERNING LAW

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 the law of England and Wales.

30. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales 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). This agreement has been entered into on the date stated at the beginning of it.

This agreement has been entered into on the date Customer clicks to accept the Agreement

Schedule 1 Subscription Term

1. Initial Subscription Term: 30 calendar days.
2. Subscription Fees: The Subscription Fees for different plans are provided at www.flymycloud.com or www.bizzybud.com
3. Additional User Subscription Fees : Additional User Subscriptions may be purchased by the Customer in accordance with clause 3 at the same rate as a regular subscription.

This agreement has been entered into on the date Customer clicks to accept the Agreement.