Middleware License Agreement

THIS AGREEMENT is between the following parties (each a Party and together the Parties):

PARTIES

(1) **Fly My Cloud Limited,** a company incorporated in *England and Wales* whose registered company number is 09756179 and whose registered office is at *71-75 Shelton Street, Covent Garden London UK WC2H 9JQ* (the Provider); and

(2) The Customer, the entity based in the United Kingdom agreeing to these terms. If an entity is accepting these terms on behalf of the Customer, the entity represents and warrants that: (i) they have full legal authority to bind Customer to this Agreement; (ii) they have read and understood this Agreement; (iii) they are resident in the UK for tax purposes; and (iv) they agree, on behalf of Customer, to this Agreement. If an entity does not have the legal authority to bind the Customer, they should not select the checkbox to accept these terms.

This Agreement governs the Customer's access to and use of the Service.

Recitals

A. The Customer wishes to deploy and scale a web application or a website using the service (the "Middleware Platform") supplied by the Provider.

B. The Customer understands the Middleware Platform is in beta stage and may not perform as expected.

C. The Customer understands that the auto-scaling is applicable only for services created at https://middleware.flymycloud.com/autoscale-applications (the Service).

D. Other services (the "Other Services") that are available through the Middleware platform such as Cloud Servers (https://middleware.flymycloud.com/cloud-servers), Cloud Databases (https://middleware.flymycloud.com/cloud-databases) will not come with auto-scaling and the Customer is responsible for creating, maintaining and deploying solutions; and maintaining instances associated with these services.

E. This Agreement is effective as of the date Customer selects the checkbox to accept the Agreement (the "Effective Date"). If you are accepting on behalf of Customer, you represent and warrant that you have full legal authority to bind Customer to this Agreement.

F. The purpose of the Service is to deploy the Customer's Website or Application.

G. The Customer understands that the Provider does not operate a hosting business and all the Customer software and data will be hosted with Third Party Hosting provider (s).

H. The Customer or Customer's agent(s) will provide the data and software and any other content required for the application or website as required by the Middleware

and the Provider will provide the service through the Middleware Platform on the terms set out in this Agreement.

THE PARTIES AGREE:

1. Definitions and interpretation

In this Agreement, unless otherwise provided:

1.1. Definitions

Acceptable Use Policy	means the Acceptable Use Policy (AUP) on the Provider's website (This policy is available at https://www.flymycloud.com/aup)
Application	means any web-based software;
Account	Customer account registered through https://www.flymycloud.com/register
Business Day	means a day other than Saturday, Sunday and public holidays when clearing banks generally are open for non-automated business;
Charges	means the sums charged to the Customer, excluding VAT and other sales tax, as set out in Schedules 1 and 2, and 'Additional Charges', 'Resource Cost', 'Set-up Charges', and 'Maintenance Charges' shall have the meanings set out in Schedules 1 and 2;
Confidential Information	means any and all confidential information (whether in written or electronic form), including technical or other information imparted in confidence or disclosed by one party to the other or otherwise obtained by one party relating to the other's business, finance or technology, know-how, intellectual property, assets, strategy, products, and customers, including without limitation information relating to management, financial, marketing, technical and other arrangements or operations of any person, firm or organisation associated with that party;
Content	means all text, graphics, images, sound, data, software and materials provided by the Customer for the Application or the Website from time to time as required by this Agreement;
Downtime	means an interruption in the Services of more than 60 seconds due to the default of the Provider;

Force Majeure	means an event or sequence of events that are beyond a party's reasonable control (which could not reasonably have been anticipated and avoided by a party) preventing or delaying it from performing its obligations hereunder, including without limitation war, revolution, terrorism, riot or civil commotion, any problems with Third Party hosting providers, or reasonable precautions against any such events; strikes, lock outs or other industrial action, whether of the affected party's own employees or others; blockage or embargo; acts of or restrictions imposed by government or public authority; explosion, fire, corrosion, flood, natural disaster, or adverse weather conditions. Force Majeure does not include, without limitation, inability to pay, shortage of or increase in the price of raw materials, over-commitment or other circumstances that may make the terms of this Agreement unattractive to a party;
Intellectual Property Rights	means copyright, rights in inventions, patents, know-how, trade secrets, trademarks and trade names, service marks, design rights, rights in get-up, database rights and rights in data, semiconductor chip topography rights, domain names and all similar rights, and, in each case:

    (a) whether registered or not;

    (b) including any applications to protect or register such rights;

    (c) including all renewals and extensions of such rights or applications;

    (d) whether vested, contingent or future; and

    (e) wherever existing;

Month	means a calendar month;
Server	means any server (cloud, virtual or dedicated) used by the Provider to deploy the Application or Site from time to time;
Service Credit	means a credit from the Provider to the Customer, provided this can only be utilised for the purchase of the Provider's Middleware services and in accordance with clause 13 of this Agreement.
Services	means the deployment of Customer's Site or Application through Middleware Platform (including the setting up of Customer's Application or Site on the Middleware Platform) to be provided under this Agreement as set out in Schedule 1;
Settings Page of Middleware Platform	The settings page is available at https://middleware.flymycloud.com/settings
Site / Website	means the website(s) to be hosted on the Server by the Provider for the Customer using the Content;
Specification	means the specification as set out in Schedule 1;
Start Date	means the date of this Agreement;

Submissions	means any user or other third party generated Content emailed or otherwise externally submitted to the Site or the Application;
Terms URL (Agreement Terms URL)	https://www.flymycloud.com/middleware-terms
Third Party Host	means any hosting provider that the Provider may use from time to time, including (but not limited to) services such as Amazon AWS, Google Cloud and Microsoft Azure; and
VAT	means United Kingdom value added tax and any other tax imposed in substitution for it.

1.2. Interpretation

Unless otherwise provided:

1.2.1. each gender includes the others;

1.2.2. the singular includes the plural and vice versa;

1.2.3. references to clauses, Schedules or Appendices are to clauses, Schedules or Appendices of this Agreement;

1.2.4. references to this Agreement include its Schedules and Appendices, as amended from time to time;

1.2.5. references to persons include individuals, unincorporated bodies, government entities, companies and corporations;

1.2.6. 'including' means including without limitation;

1.2.7. general words are not limited by example;

1.2.8. clause headings do not affect their interpretation;

1.2.9. a document is in agreed terms if Customer has purchased this plan from the Provider's website (www.flymycloud.com);

1.2.10. references to legislation (including any subsidiary legislation) include any modification or re-enactment thereof;

1.2.11. 'writing' includes manuscript, telexes, facsimiles, emails, communications in Braille and other permanent forms.

2. Services

2.1. The Provider will supply the Services to the Customer from the Start Date until the expiry or termination of this Agreement subject to compliance by the Customer with the terms of this Agreement.

2.2. The Provider may store the Content and any Submissions on the Server(s).

2.3. The Provider has the right to store any data, content or software anywhere outside of the European Union.

2.4. The Provider or the Third Party Host may allocate an internet protocol address to the Site or the Application and may renumber or reallocate the internet protocol address for the Site from time to time as appropriate. The Customer will have no entitlement or interest in any internet protocol addresses allocated by the Provider or the Third Party Host whatsoever whilst the Agreement is in force or upon termination of the Agreement.

2.5. The Customer understands that the Provider will be using Servers provided by Third Party Host(s).

3. New Applications and Services

3.1. The Provider may: (i) make new applications, tools, features or functionality available from time to time through the Services and (ii) add new services to the "Services" definition from time to time, the use of which may be contingent upon Customer's agreement to additional terms.

4. Technical Support Service

4.1. The Customer is responsible for technical support of its Applications and Site.

4.2. The Provider is under no obligation to provide technical support for the Customer's Applications and Projects unless a Support Plan is purchased by the Customer. The nature of such support will be governed by the terms and conditions of this Support Plan.

5. Charges and payment

5.1. In consideration of the Provider providing the Services in accordance with this Agreement, the Provider will automatically deduct the following charges from the Customer using the payment details provided by the Customer:

5.1.1. the Set-up Charges;

5.1.2. the License fee as provided in Schedules 1 and 2; and

5.1.3. any Additional Charges as provided in Schedules 1 and 2 (these charges are payable immediately upon creation of any associated resource and the provider may charge your payment card immediately on creating such resources).

5.1.4. For the avoidance of doubt, the License fees and Additional Charges are applied based on the plan selected by the Customer after they have registered for the Services on the Provider's Website.

5.2. For the avoidance of doubt, the Customer is obligated to pay all applicable Fees without any requirement for the Provider to provide a purchase order number on the Provider's invoice (or otherwise).

5.3. VAT will be charged in addition to all Charges (where eligible) and will be payable by the Customer.

5.4. In order to use any of the Services the Customer agrees to have add a payment card (credit or debit) to their account or arrange for signed a Direct Debit mandate to be activated on their account, so that the Charges and Payments may be deducted automatically from their account.

5.5. The Customer is responsible for any Taxes, and Customer will pay The Provider for the Services without any reduction for Taxes. If the Provider is obligated to collect or pay Taxes, the Taxes will be collected from the Customer, unless Customer provides the Provider with a timely and valid tax exemption certificate authorized by the appropriate taxing authority. If Customer is required by law to withhold any Taxes from its payments to the Provider, Customer must provide the Provider with an official tax receipt or other appropriate documentation to support such withholding. If required by law, the Customer will provide the Provider with such tax identification information that the Provider may require to ensure its compliance with applicable tax regulations and authorities in applicable jurisdictions. Customer will be liable to pay (or reimburse the Provider for) any taxes, interest, penalties or fines arising out of any mis-declaration by the Customer.

5.5. Payment of Charges will be made by such means as the Provider directs, including online transfer or web based payment, at the cost of the Customer.

5.6. In the event that the Customer delays or withholds payment for the Services for any reason, the Provider may suspend the Services or terminate the Agreement.

5.7. The Provider may, without limiting its other rights, charge interest on any sums due but not paid in full by the due date, at 7% per annum above the Bank of England base rate from time to time in force.

5.8. Interest will accrue on a daily basis, and shall apply from the due date for payment until actual payment in full, whether before or after judgment.

5.9. To the fullest extent permitted by law, the Customer waives all claims relating to Fees unless claimed within thirty days after charged (this does not affect any Customer rights with its credit card issuer). Refunds (if any) are at the discretion of the Provider and will only be in the form of credit for the Services. Nothing in this Agreement obligates the Provider to extend credit to any party.

6. Customer responsibilities

6.1. The Customer will provide the Content and the Software to the Provider, through the Middleware Platform in the format required by the Provider, to enable the Provider to deploy the Site on the Server(s) and provide the Services.

6.2. the Customer shall be responsible for:

6.2.1. providing accurate and complete Content or updated Software and in the format required by the Specification;

6.2.2. responding promptly from time to time to the reasonable requests of the Provider for any additional information or assistance to ensure the successful deployment of the Site or Application;

6.2.3. complying with all of the terms of this Agreement and any terms and conditions of Third Party Host(s) (referred to in Schedule 1 of this Agreement) throughout the term of this Agreement;

6.2.4. any Submissions, including any loss or damage to data, programs or hardware, any breaches of security, or harm caused by viruses or devices;

6.2.5. using the Services in accordance with this Agreement and any applicable laws or regulations; and

6.2.6. any liability incurred by the Provider arising from any damage suffered by any other customers of the Provider due to any breach of this Agreement by the Customer.

6.3. The Customer is responsible for testing the Application or Website to check that it has been deployed correctly.

6.4. The Customer is required to notify the Provider of any defects in relation to the deployment of the Application or Website within 2 Business Days of purchase by writing to middleware-support@flymycloud.com. The Provider is not responsible for correcting any defects notified after this date and the deployment will be deemed successful.

6.5. The Application or Website will be deemed to have been successfully completed notwithstanding any defect in the Content or any act or omission of the Customer ('Customer Defect').

6.6 The Customer shall not update the Application or Website more than 5 times a calendar month if the Customer has not purchased the "Application Maintenance" add-on from the Provider.

6.7 If the Customer has not purchased the "Application Maintenance" " add-on from the Provider, the Customer should not upload any file greater than 2 MB to the Middleware Platform.

7. **Intellectual Property and Licences**

7.1. All Content provided by the Customer or any agent of the Customer shall remain the property of the Customer, its agents or its licensors. The Customer grants to the Provider a non-exclusive worldwide royalty-free licence for the purposes of the performance of this Agreement whether during or after the term of this Agreement.

7.2. Any Intellectual Property Rights other than those contained in the Content, the Website or the Application existing at the date of this Agreement or Content provided by the Customer after that date are the property of the Provider, and the Customer assigns to the Provider all rights and titles in any such Intellectual Property Rights, both present and future and waives any moral or other rights it may have in such Intellectual Property.

7.3. The Customer grants to the Provider a non-exclusive worldwide royalty-free licence to use any data associated with the performance of the Customer's Site or Application to improve the Middleware Platform.

7.4. The Customer accepts that all Middleware Platform-related content and software are the property of the Provider and the Customer has no Intellectual Property rights in the same notwithstanding the possibility that any data associated with the performance of Customer's Site or Application may be, or may have been, used to improve the Middleware Platform.

7.5. The Customer's right to use the Middleware Platform is granted through a revocable license and is valid only during the term of this Agreement.

7.6. The Customer is prohibited from reverse engineering, or attempting to reverse engineer any parts of the Middleware Platform. The Customer understands that any breach of this clause is likely to cause significant, irreparable damage to the Provider's business interests.

7.7. The Provider shall not be obliged to return to the Customer any Content, or any media containing Content or other materials provided by the Customer under this Agreement whether during or after the term of this Agreement unless specifically agreed in writing between the parties.

7.8. The Customer will indemnify and keep indemnified the Provider against all claims, liabilities, losses, damages, costs and expenses arising from any claim or allegation that the Site, any Content, Software or Submission infringes the Intellectual Property Rights of any third party.

8. Confidential Information

8.1. Neither Party will, without the other's prior consent, disclose the Confidential information of the other Party.

8.2. Neither Party will use the other's Confidential Information for any purpose other than for the purpose of performing this Agreement.

8.3. Disclosure of Confidential Information may be made to a Party's:

8.3.1. officers;

8.3.2. employees;

8.3.3. professional advisers; and

8.3.4. consultants and other agents,

provided that the recipient is subject to no less obligations of confidentiality than the Party itself and the Party disclosing is responsible for compliance with the same.

8.4. Confidential Information does not include information that:

8.4.1. is or becomes public other than by breach of this Agreement;

8.4.2. was known to the other Party before this Agreement without breach of confidence;

8.4.3. is independently developed by or becomes available to the other Party without using any information supplied by the first Party; or

8.4.4. is required to be disclosed by law or regulatory authority. In the case of such disclosure the Party subject to such requirement shall first notify the other Party of the actual or potential requirement to disclose, if permitted to do so by law, and will comply with

the reasonable requests of the other Party as to the manner of such disclosure as far as possible and in accordance with the applicable law.

Upon termination of this Agreement all Confidential Information, upon request, each party will use commercially reasonable efforts to destroy all Confidential Information of the other party including copies of the same, relating to or supplied by a Party and which is or should be in the other Party's possession.

8.5. This clause shall remain in force for a period of two years from the date of termination of this Agreement.

9. Access

9.1. The Customer must have an Account and a Token (if applicable) in order to access the Services, and is responsible for the information it provides to create the Account, the security of the Token and its passwords for the Account, and for any use of its Account and the Token. If Customer becomes aware of any unauthorised use of its password, its Account or the Token, Customer will notify the Provider as promptly as possible. The Provider has no obligation to provide multiple Tokens or Accounts to the Customer.

9.2. The Customer shall not have access to the underlying resources of the Middleware Platform, the Provider's or the Middleware's network or any Middleware-related software.

9.3. The Customer understands and accepts that the Customer cannot access any of the resources used by the Customer's Site or Application. This may include, but is not limited to the web servers upon which the Site or Application is deployed, CDN management system, DNS system and any database servers.

10. Warranties

10.1.   The Provider warrants that it will provide the Services with reasonable skill and care.

10.2.   The Customer warrants that:

10.2.1. It has all power and authority to enter into this Agreement and all rights and licences to provide the Content and to grant all necessary licences to the Provider to provide the Services and to deploy the Site or Application;

10.2.2. It owns or has all requisite licences, permissions and rights in the Content or the Application for the purposes of this Agreement;

10.2.3. The Content, Application and use of the Site or the Application will at all times be in compliance with this Agreement;

10.2.4. All material contained in or linked to the Site, the Application and all Submissions will not:

(a)   breach the Provider's acceptable use policy or otherwise be dishonest, fraudulent, defamatory, libellous, threatening or harassing, obscene, indecent or pornographic;

(b)   infringe any Intellectual Property Rights of the Provider or any third parties;

(c)   contain any viruses or other harmful or intrusive programs or other code; and

(d)   breach any laws, statute, regulations, standards or codes of practice of any relevant authority.

10.3. The Provider does not monitor or moderate the Site or the Application other than to scale the Site or the Application and accepts no liability for any content on the Site or the Application unless otherwise specified in the Schedules of this Agreement.

11. Restrictions

The Customer will not, and will not allow third parties under its control to: (a) copy, modify, create a derivative work of, reverse engineer, decompile, translate, disassemble, or otherwise attempt to extract any or all of the source code of the Services; (b) sublicense, resell, or distribute any or all of the Services separately from any integrated Application; (c) create multiple Applications, Accounts, or Projects to simulate or act as a single Application, Account, or Project (respectively) or otherwise access the Services in a manner intended to avoid incurring Fees; (d) unless otherwise set forth in the Service Specific Terms, use the Services to operate or enable any telecommunications service or in connection with any Application that allows the Customer's End Users to place calls or to receive calls from any public switched telephone network

12. Disclaimer

Save as expressly provided for in this Agreement, to the maximum extent permitted by law, the Provider and its Suppliers (this may include any Third Party Host(s)) do not make any other warranty of any kind, whether express, implied, statutory or otherwise, including warranties of merchantability, fitness for a particular use and non-infringement. The Provider and its Suppliers are not responsible or liable for the deletion of or failure to store any Customer Data and other Communications maintained or transmitted through their use of the Services. The Customer is solely responsible for securing and backing up its Application, Project, and Customer Data. Neither the Provider nor its Suppliers, warrants that the Operation of the Software or the Services will be error-free or uninterrupted. Neither the Software nor the Services are designed, manufactured, or intended for high-risk activities (this includes but not limited to taking payments and financial trading).

13. Limitation of liability

The Provider's liability under this Agreement is as set out below:

13.1. The Provider will not be liable to the Customer for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with this Agreement, the Services, the Site and its use, the Application and its use, or otherwise, except to the extent to which it is unlawful to exclude such liability under the applicable law;

13.2. Notwithstanding the generality of the foregoing, the Provider expressly excludes liability for any indirect, special, incidental or consequential loss or damage that may arise in respect of the Services, the Site and its use, or in respect of equipment or

property, or for loss of profit, business, revenue, goodwill or anticipated savings, regardless of whether these losses were foreseeable or advised to the Customer.

13.3. If any exclusion in this Agreement is invalid for any reason and the Provider is liable for loss or damage that may lawfully be limited, the aggregate liability, including any indemnities, of the Provider in any year for all claims will be limited to £100 (one hundred pounds Sterling);

13.4. The Provider does not exclude or limit liability for death or personal injury that arises as a result of the negligence of the Provider, or for losses which cannot otherwise be excluded or limited by law.

13.5 In case of any claim related to other services that are available through the Middleware platform such as Cloud Servers (https://middleware.flymycloud.com/cloud-servers), Cloud Databases (https://middleware.flymycloud.com/cloud-databases), Performance SQLaaS (https://middleware.flymycloud.com/performance-sqlaas), Cloud API(https://middleware.flymycloud.com/cloud-apis) Provider is liable for loss or damage that may lawfully be limited, the aggregate liability, including any indemnities, of the Provider in any year for all such claims will be limited to £1 (one pound Sterling);

14. Indemnification

14.1 Unless prohibited by law, the Customer will defend and indemnify the Provider and its Affiliates against Indemnified Liabilities in any Third-Party Legal Proceeding to the extent arising from:

14.1.1 any Application, Site, Customer Data or Customer Brand Features;

14.1.2 Customer's, or Customer End Users', use of the Services in violation of this the Acceptable Use Policy; or

14.1.3 Any violation(s) of this Agreement.

14.2 The Provider does not offer any indemnities to the Customer.

15. Data protection

15.1. The Customer is responsible for all compliance with relevant Data Protection laws and regulations.

15.2. The Provider may store Content on any Server in any location including territories outside the European Economic Area without notice to the Customer. By using the Services, the Customer consents to this processing and storage of Content. Under this Agreement, The Provider is merely a data processor.

16. Modifications Procedure

16.1. Modifications to the Site or the Application will be applied automatically and within a reasonable time period, as deemed by the Provider, by the Middleware Platform in the event that the Middleware Platform detects changes to the source code repository listed on the settings page of the Middleware Platform and subject to the Customer providing the appropriate permissions to the Provider to enable the Middleware Platform to access the repository and its files.

16.2. In the event that the Customer has purchased the Provider's Maintenance add-on ("Application Maintenance") product as set out in Schedule 2 of this Agreement, then the Application or the Site is managed by the Provider and the Provider will apply such Modifications as it sees fit from time to time.

17. Service Level

17.1. Site availability will be maintained at the level of *99.00%* in any period of 30 days save for any instances of Downtime or other outages as set out in this Agreement.

17.2. Service credits will be provided in respect of Downtime aggregated on a *monthly* basis and will be credited against the Charges for the relevant month.

17.3. The Customer will be given service credits if the Middleware Platform does not perform as expected (as it the Service is in beta stage) and has resulted in a downtime of the Customer's Website or Application for more than 5 minutes continuously subject to clause 17.5.

17.4. The Customer shall have no right to ask for any Service credits or any other remedy if the Middleware Platform malfunctions and has not caused a downtime of Customer's Website or Application that is already deployed through the Middleware Platform for more than 5 minutes continuously.

17.5. The maximum Service credits that the Customer can receive in a month will be equal to the Monthly License Fee as set out in the Schedules.

17.6. Requests for credit must be made by the Customer within five Business days of the Downtime by way of written notice to the Provider which includes details of the dates and times of the Downtime, and such other information as is requested by the Provider.

17.7. Service credits will not be provided for:

17.7.1. Planned or emergency service outages;

17.7.2. Any outages of any Third Party Host(s) whether planned or otherwise;

17.7.3. Any technical difficulties associated with the infrastructure of any Third Party Host(s);

17.7.4. Downtime resulting from any breach of this Agreement or any acts or omissions by the Customer or any user authorised by the Customer;

17.7.5.. The Customer understands and agrees that during scaling, the Application or Site may be unavailable for up to 10 minutes unless the Customer has selected the Predictive Scaling option on the Settings page of the Middleware Platform

17.7.6. The Customer understands and agrees that the Application or Site will experience Downtime resulting because of the exhaustion of resources in the event that the Customer has placed limits on the degree of scaling that can be achieved on the Settings page of the Middleware Platform.

17.7.7. Downtime resulting from any maintenance or update being applied to the Application or the Site; and

17.7.8. Any failure or defect in Customer equipment, facilities, applications, internet connection or internet service provider.

17.8. For the avoidance of doubt, inability to access the Application or the Site due to any bugs in the Application or the Site is not considered to be Downtime and accordingly the Provider shall not be held liable in the event of such disruption.

17.9. The Provider will endeavour to notify the Customer as soon as reasonably possible of any anticipated or planned outages.

17.10. Downtime will be investigated and analysed as soon as practicable and the Provider will use its reasonable endeavours to restore the Services as soon as reasonably practicable.

17.11. The Customer agrees that credits for Downtime represent a reasonable assessment of any loss and damage incurred by the Customer as a result of Downtime and that no other remedy will be available to the Customer or required by the Customer for such loss or damage.

17.12. The Provider will announce if it intends to discontinue or make backwards incompatible changes to the Services by emailing the Customer. The Customer is responsible for any costs associated with switching to another provider and the Customer is responsible for the Provider's fees in the event that the Customer seeks to transfer any data from the Middleware Platform. The Customer accepts that the Provider is in no way responsible for any costs associated with such a transfer. Any unused fees paid upfront will be refunded within 30 days.

17.13. The Provider may discontinue any Services or any portion or feature for any reason at any time without liability to Customer.

18. Term and termination

18.1. This Agreement will start on the Start Date and will operate for an initial period of one year from that date, unless:

18.1.1 the Customer was given an option; and the Customer selected this checkbox; to purchase a monthly rolling plan offered by the Provider.

18.2. The term of this Agreement will be automatically renewed for a further year (or a further month if the initial term was one month) on each anniversary of the Start Date unless terminated by three months' (or 5 working days if the initial term was one month) prior written notice by either Party expiring on the next anniversary of the Start Date *or* unless terminated earlier as otherwise provided.

18.3. The Provider has the right to terminate this agreement for any reason. The Customer has 7 days to transfer any data out by paying the Transfer Charges (as defined in

Schedule 1) to the Provider in full. Any unused amount of monies paid upfront will be refunded within 30 days. The Provider may terminate this Agreement for its convenience at any time without incurring any liability to the Customer.

18.4. Either Party may terminate this Agreement immediately by notice to the other Party if following a material breach by the other Party of this Agreement, or in the case of a breach capable of remedy, the other Party fails to remedy such breach within 60 calendar days of receipt of notice of the breach giving details of the breach and the remedy required.

18.5. Either Party may terminate this Agreement immediately by notice to the other Party if:

18.5.1.(otherwise than for solvent reorganisation) a resolution for winding up is passed by the other Party, or a court order is made for winding up of the other Party, or a petition is presented for winding up of the other Party;

18.5.2.an encumbrancer takes possession or a receiver is appointed over any of the property or assets of that other Party;

18.5.3.the other Party makes any voluntary arrangement with its creditors or becomes subject to an administration order;

18.5.4.the other Party goes into liquidation (except for the purposes of amalgamation or reconstruction and in such manner that the successor effectively agrees to be bound by or assume the obligations imposed on the other Party under this Agreement);

18.5.5.anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to that other Party; or that other Party ceases, or threatens to cease, to carry on business.

18.6. Termination of this Agreement for whatever reason will not affect the accrued rights and liabilities of the Parties arising from this Agreement at the date of termination, or any provisions of this Agreement that are expressed, or by their context intended, to survive termination.

18.7. Upon the termination of this Agreement for any reason:

18.7.1.the Customer may request the Provider to transfer the Site, the Application or the Content to the Customer or as directed by the Customer; and

18.7.2.the Provider will provide all reasonable assistance to the Customer for such transfer to the Customer at the Customer's cost and at the rates described in the Schedules of this Agreement. The Provider may require payment of sums on account in advance for this work.

18.8. Upon the termination of this agreement for any reason (save for termination in the event of material breach of this Agreement or Force Majeure or Variation under clause 21.5 of this Agreement), the Customer shall be required to pay in full all outstanding Charges due to the Provider under this Agreement for the entire contractual period. The Customer shall not be entitled to recover any sums in respect of any Charges paid and payable in accordance with Agreement.

19. Customer Feedback

If the Customer provides Feedback about the Services to the Provider, then the Provider may use that information without reference to the Customer, and the Customer hereby irrevocably assigns to the Provider all rights, titles, and interests in said Feedback.

20. Publicity

The Provider may include Customer's name or Brand Features (which may include Customer's logo, screenshot of their Site or Application, or features of their Site or Application) in a list of the Provider's customers, online or offline promotional materials. The Provider may also verbally reference Customer as a customer of the Services. Customer hereby grants the Supplier a royalty-free licence to use the Second Party's company logo for the Supplier's marketing purposes.

21. General provisions

21.1. Time

Time is not of the essence for any time, date or period in this Agreement except as specified and except in relation to any payment terms referred to in this Agreement and the accompanying Schedules of this Agreement.

21.2. Relationship

The Parties are independent businesses and are not partners, principal and agent, or employer and employee, or in any other relationship of trust with each other.

21.3. Force Majeure

Neither party will be liable for failure or delay in performance to the extent caused by circumstances beyond its reasonable control

21.4. Set-off

All amounts due under this Agreement shall be paid in full without any deduction or withholding other than as required by law, and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Provider to justify withholding payment of any such amount in whole or in part.

21.5 Change in Control

If a party experiences a change of Control (for example, through a stock purchase or sale, merger, or other form of corporate transaction) that party will give written notice to the other party within thirty days after the change of Control.

21.6 Variation

The Provider may vary these terms and conditions at any time. The Provider will notify the Customer of such changes by way of an email to the email address utilised by the customer when registering for the Middleware Platform. If the Customer disagrees with the changes, the Customer should stop using the Services within 5 working days of the changes being notified to the Customer. Upon the expiry of the

5 working day notice period, the Customer's continued use of the Services will constitute their acceptance to the variation.

The Provider will post any modification to this Agreement to the Terms URL.

21.7 Rights of third parties

Nothing in this Agreement, save as may be otherwise expressly provided, creates any rights pursuant to the Contracts (Rights of Third Parties) Act 1999 in favour of anyone other than the Parties to this Agreement.

21.8 Priority

The terms of this Agreement prevail over the Schedules and any Appendices.

21.9 Assignment and subcontracting

(i)The Customer shall not, without the Provider's prior written consent, assign or subcontract any right or obligation under this Agreement, in whole or in part, such consent not to be unreasonably withheld or delayed.

(ii)The Provider may assign or subcontract its rights and obligations, without the Customer's prior written consent, and shall promptly notify the Customer of any such assignment or subcontract.

21.10 Entire agreement

This Agreement, together with the accompanying Schedules, contains the whole agreement between the Parties relating to its subject matter and supersedes any prior agreements, representations or understandings between them unless expressly incorporated by reference in this Agreement. Each Party acknowledges that it places no reliance on, and shall have no remedy for, any representation (whether innocent or negligent) made but not expressly embodied in this Agreement. Nothing in this clause limits or excludes any liability for fraud or fraudulent misrepresentation.

21.11 Governing law and jurisdiction

This Agreement is governed by the law of England and Wales and falls under the exclusive jurisdiction of the English *courts*.

21.12 Costs

Each Party is responsible for its legal and other costs in relation to the preparation and performance of this Agreement.

21.13 Language

21.13.1The language of this Agreement is English. All documents, notices, waivers and other written communications between the Parties in relation hereto will be in English.

21.13.2If this Agreement is translated, the English version will prevail.

21.14 Severability

The unenforceability of any part of this Agreement will not affect the enforceability of any other part. In the case of any provision that is found to be unenforceable, the

Parties will promptly and in good faith negotiate a replacement provision consistent with the intent of this Agreement.

21.15 Waiver

21.15.1 Unless otherwise agreed, no delay, act or omission by either Party in exercising any right or remedy will be deemed to be a waiver of that, or any other, right or remedy.

21.15.2 Consent by a Party, where required, will not prejudice that Party's future right to withhold similar consent.

21.16 Notices

All notices must be in writing and addressed to the other party's primary point of contact. The primary point of contact for the Customer will be the email associated with the Account or the Middleware Platform. The email address for notices being sent to Fly My Cloud is notices@flymycloud.com. Notices will be treated as given, and will be deemed received by email: 24 hours from delivery if no notice of delivery failure is received.

SCHEDULE 1

1. **Specification**

The Provider is required to deploy the Customer's Site or Application through the Middleware Platform to enable auto-scaling of resources provided by Third Party Host(s). The Customer agrees to provide the source code and content for the Site or the Application as required by the Middleware Platform (or as requested by the Provider).

2. **Charges**

The charges for the Services are as follows:

Set-up Charges: £500 (five hundred pounds sterling) payable as a one-off fee for providing the Services;

License Fee: The Customer agrees to pay:

_ £ 49.00 per month for Basic Plan (No auto-scaling or application is included); or

_ £ 99.00 per month for Dev Plan; or

_ £ 499.00 per month for Start-up; or

_ £ 999.00 per month for SME Plan; or

_ £ 2499.00 per month for Corporate Plan

for using the Middleware Platform based on what the Customer has selected whilst selecting the plan online. The first payment shall be payable immediately upon the Effective Date of this Agreement;

Additional Charges: These are specified in Schedule 2 of this Agreement

Transfer out Charges: £ 10,000.00 (ten thousand pounds Sterling) plus VAT for the data to be moved out of the Middleware Platform or from any servers maintained by the Middleware Platform. The fee of £10,000 plus VAT covers any data transfer up to 10 GB and further data transfers cost the sum of £ 1,000) one thousand pounds sterling) plus VAT per GB thereafter.

Unless specified otherwise in this Schedule, payment of the Charges shall be made as set out in clause 5 of this Agreement (Charges and payment).

3. **Service Levels**

There are no other Service Level provisions for this Agreement.

4. **Scaling**

The Provider shall scale the resources (as set out in Schedule 2 of this Agreement) used by the Application or the Website based on the Customer's usage pattern or demand. The Customer agrees to pay an additional sum to the Provider of up to £1.00 per month for deploying additional resources for auto-scaling. Details in relation to these rates are set out in Schedule 2 of this Agreement. The Customer understands and accepts that, after reaching this specified limit (£1.00) the auto-scaling will stop and may negatively impact upon the performance of the Site or Application. The Provider accepts no liability whatsoever for such negative impacts on the Site or Application. The Customer may set and alter this value (£1.00) by altering the settings on the Middleware Platform. The Customer understands and accepts that any alterations to these values will affect the amount of scaling which occurs and the Customer will be charged the entire amount due immediately upon confirming their product selection. If the Customer sets this value to be 'unlimited', the Provider will charge the Customer the sum of £10,000.00 immediately upon confirming their selection, and the Provider will charge

a further sum of £10,000.00 once the Customer's balance on the Account has reached the sum of £500.00. The only permitted payment method for this unlimited scaling option is via a linked debit or credit card to the Customer's Account. If the Customer's payment method is rejected due to any reason, this limit will automatically revert back to the £1.00 per month option.

6   Updating the Application or the Website

The Customer shall be responsible for any errors resulting from an update or updates to the Application or the Website. The Middleware Platform shall update the Website or the Application on a regular basis provided that the Customer has given the Provider access to the relevant code repositories, as required by the Middleware Platform, to enable such updates.

7   Retainer

The Provider may ask the Customer to pay a sum of £ 100 as retainer to the Provider ("the Retainer") and this sum is payable, if requested, on the Effective Date of this Agreement. The Provider reserves the right to increase the Retainer if the Customer wishes to increase the scaling in accordance with the rates set out in Schedule 2 of this Agreement.

8   Senior Responsible Officers (SROs)

Party	Name	Email
The Provider (Fly My Cloud Limited)	Dr. Aasis Vinayak	aasis@flymycloud.com
The Customer	Registered User's name on Middleware Platform (or Account)	Registered Email on Middleware Platform (or Account)

9   Third Party Host Terms and Conditions

The following links contain the Terms and Conditions of Third Party Hosts that are used by the Provider. These links provide links to additional terms and conditions. These links and any accompanying links may change and it is the Customer's responsibility to verify and check the links and the information contained therein. The Customer is responsible for verifying and complying with these terms and conditions when using the Services. By signing this Agreement, the Customer agrees to and accepts all of terms and conditions of these Third Party Hosts.

- Google Cloud: https://cloud.google.com/terms/
- Amazon AWS: https://aws.amazon.com/service-terms/
- Microsoft Azure: https://azure.microsoft.com/en-gb/support/legal/

Plans

	Basic Plan	Dev Plan	Start-up	SME Plan	Corporate Plan
Default	No Applications. 1 vCPU Instance (except Windows) with 1 GB memory; 1 Database Server - vCPU Instance with 1 GB memory; and 10 GB Storage	1 Application (up to 1 vCPU per instance)	1 Application (up to 8 vCPU per instance) with 1 Database Server (up to 2 vCPU per instance)	1 Application (up to 16 vCPU per instance) with 1 SQL Database Server (with no slave) - up to 16 vCPU per instance and 1 NoSQL Database with no backup	3 Applications with (up to 32 vCPU per instance) 1 SQL Database Server (with slave) - (up to 32 vCPU per instance), 1 NoSQL Database with Backup and 1 Oracle License
Auto-scale	No	Yes	Yes	Yes	Yes
Languages Supported	Not Applicable	PHP, JAVA	PHP, JAVA, RUBY	PHP, JAVA, RUBY, GO	PHP, JAVA, RUBY, GO, ASP.NET
Backup	SQL Database only	Add-on	Add-on	Yes (except NoSQL)	Yes
Cross platform Support	Yes	Yes	Yes	Yes	Yes
Apps	0	1	1	2	5
Price (in GBP per month)	£ 49.99	£99.99	£499.99	£999.99	£2499.99
Reserved Resources	£99.00 per server	£99.00 per server	£99.00 per server	£99.00 per server	£99.00 per server

SCHEDULE 2

Additional Charges (per unit per month)

Resource	Dev / Basic Plan*	Start-up	SME Plan	Corporate Plan
Linux Server (additional resource charges apply) including those created at https://middleware.flymycloud.com/cloud-servers	£20.00	£50.00	£69.00	£79.00
Windows Server (additional resource charges apply)	£99.00*	£99.00	£199.00	£399.00
SQL Database Server (MySQL/ PostgreSQL) (additional resource charges apply) https://middleware.flymycloud.com/cloud-databases	£20.00	£50.00	£99.00	£99.00
NoSQL Server (Dynamo/ MongoDB) (additional resource charges apply)	£20.00*	£20.00	£20.00	£20.00
In-memory Database (Redis) (additional resource charges apply)	£400.00*	£800.00	£1100.00	£1300.00
MSSQL Server (additional resource charges apply)	Not Applicable	£99.00	£399.00	£799.00
Oracle (additional resource charges apply)	Not Applicable	Not Applicable	£1999.00	£4999.00
Cache (Memory/DB/File) (additional resource charges apply)	£89.00* per instance (File only)	£99.00 per instance (File and DB)	£129.00 per instance (Memory/DB/File)	£149.00 per instance (Memory/DB/File)
Application Maintenance	£ 200.00*	£ 500.00	£ 1000.00	£ 5000.00
Additional App (same as in the plan except Corporate Plan)	£99.00*	£449.00	£799.00	£1299.00 for one additional application (up to 32 vCPU per instance) and 1 SQL Database Server (with slave) - up to 32 vCPU per instance

Build Service (if any artifacts are associated with the Application)	£ 1000.00*	£ 1000.00	£ 1000.00	£ 1000.00

* not available or not applicable under Basic Plan

Resource cost (per unit) for scaling

Resource	Unit	Price
CPU (Application Server, Database Server)	1 vCPU	£ 29.00
RAM (Application Server, Database Server)	1 GB	£ 19.00
IP Address	1 address	£ 5.00
Cloud Storage	1 GB	£ 10.00
Performance SQL as a Service	1,000,000 rows or 10 GB with limit of 1000 IOPS	£ 1999.00
SSD Storage (Application Server, Database Server)	1 GB	£ 2.00
Bandwidth (Application, Site, CDN, API)	1 GB	£ 1.00