

OpenSky Data Systems

Cloud Services - Terms and Conditions

1. Definitions

- 'Charges' shall mean the fees payable by the Customer for the Services as set out in the Proposal.
- 'Contract' shall mean the contract between OpenSky and the Customer for the purchase of the Services in accordance with these terms and conditions and the Proposal.
- 'Customer' shall mean the person or organisation who purchases the Services from OpenSky.
- 'Proposal' shall mean the written proposal document issued by OpenSky to the Customer which sets out the Services and the Charges.
- 'Services' shall mean the services to be provided by OpenSky to the Customer as detailed in the Proposal.

2. Exclusive Terms and Conditions

These standard terms and conditions apply to the Contract to the exclusion of any other terms the Customer seeks to impose or incorporate, or which are implied by trade, custom practice, or course of dealing.

3. Services

- 3.1 OpenSky shall provide the Services in accordance with the Proposal.
- 3.2 OpenSky shall use reasonable endeavours to achieve completion of the Services by the estimated date, however, all completion dates will be treated as estimates only and time will not be of the essence.
- 3.3 All completion dates will be extended by a reasonable period and reasonable additional costs incurred reimbursed to OpenSky if any delay or stoppage is caused by any act or omission of the Customer.

4. Payment Terms

- 4.1 All Charges due under the Contract will be paid by the Customer within 30 days of the date of invoice from OpenSky. Where applicable, VAT and any other taxes, duties or levies will be paid additionally by the Customer at the then prevailing rate.
- 4.2 If the Charges payable to OpenSky under the Contract are unduly delayed by the Customer, OpenSky reserves the right without prejudice to any of its other rights or remedies to: (i) charge interest on such overdue sums on a day to day basis from the original due date until paid in full at a rate of 5% above the then current base lending rate of Bank of Ireland; and/or (ii) restrict, suspend, and/or terminate the provision of the Services on 5 days prior written notice.

5. Liability

- 5.1 OpenSky's maximum aggregate liability under this Contract shall be limited to the fees paid in the preceding 12 month period by the Customer under the relevant Call Off Contract at the time of the event giving rise to the liability.
- 5.2 OpenSky shall not be liable for the following types of loss or damage whatsoever or howsoever caused, whether such losses or damage were foreseen, foreseeable, known or otherwise: loss or damage consequent upon design, formula, specification or advice; loss of profits; loss of sales or opportunity; loss of anticipated savings; loss of contracts; loss of customers or damage to goodwill or reputation; loss of the use of any software, data, computer or other equipment; wasted management or other staff time; cost of substitute goods, services or technology; or special, indirect, incidental or consequential loss or damages. For the purpose of this clause, the term "loss" means a partial loss or reduction in value as well as a complete or total loss and even if such loss or damage was reasonably foreseeable or OpenSky had been advised of the possibility of the Customer incurring same.

6. IPR

Title, copyright and all other proprietary rights in connection with the Services provided by OpenSky and all parts and copies thereof shall remain vested in and be the absolute property of OpenSky and its licensors.

7. Termination

7.1 The Contract may be terminated by either party:

On written notice if the other party is in material and persistent breach of the terms of the Contract and in the event of a

- (i) breach capable of being remedied, fails to remedy the breach within 30 days of receipt of notice in writing.
- (ii) On written notice if one party is unable to pay its debts or enters into compulsory or voluntary liquidation.

7.2 In the event of termination:

- (i) OpenSky shall immediately cease the provision of the Services;
- (ii) the Customer shall immediately pay in full all outstanding invoices and sums due to OpenSky for Services performed up to the date of termination.

8. Customer Obligations

The Customer shall provide OpenSky with:

- (i) all necessary co-operation in relation to this Contract to enable OpenSky to carry out its obligations;
- (ii) all necessary access to such information as may be required by OpenSky including but not limited to answers to queries, decisions and approvals.

9. Confidentiality

A party (Receiving Party) shall keep in strict confidence confidential information that is disclosed to the Receiving Party by the other party, its employees, agents, or subcontractors. The Receiving Party shall only disclose such confidential information to those of its employees, agents, or subcontractors who need to know the same for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents, or subcontractors shall keep such information confidential.

10. Changes

No change to the Contract will be effective unless it is in writing and signed by both parties "Change Request". Each Change Request shall document the scope of work, the costs associated with the change and any effect the requested change will have on existing timelines.

11. Force Majeure

Neither party shall be liable for failure or delay in the performance of any of its obligations under this Contract if such failure or delay results from Force Majeure, but any such failure or delay shall be remedied as soon as practicable.

12. Assignment

The Contract is personal to OpenSky and the Customer may not assign, novate, or otherwise transfer its rights or obligations under the Contract within the prior written consent of OpenSky.

13. Non-Solicitation

It is agreed that neither OpenSky nor the Customer shall approach directly or indirectly employees of the other with offers of employment for the duration of the Contract and for a period of twelve months thereafter unless agreed in writing by both parties.

14. Dispute Resolution

In the event of any dispute between the parties, the parties shall first each use its respective reasonable endeavours in good faith to resolve any such dispute by negotiation between the parties' nominated representatives and if the parties fail to resolve the dispute within 10 days of the dispute being referred to them, it shall be referred to an independently appointed mediator who shall consider the resolution of the dispute in a prompt and expeditious manner.

15. Third Party Rights

Nothing in this Contract shall confer, nor is it intended to confer, any enforceable right on any third party except as otherwise expressly so stated.

16. Jurisdiction

The Contract shall be subject to Irish law and the parties hereby agree to submit to the exclusive jurisdiction of the Irish courts.