

## FLYTXT CLOUD SERVICE OFFERINGS

### TERMS OF SERVICE

*Last updated: 03 November 2022*

By using NEON Cloud Service (“NCS”), you agree to be bound by these terms of service (“Terms of Service”) and by the Service Offering Documentation, which together constitute the “Agreement”. If you do not agree to any portion of the Agreement, you must not use the NCS. Capitalized terms used in these Terms of Service are defined throughout these Terms of Service and in Section 1.

The Agreement takes effect when you click “I accept” or similar button or check box presented to you as part of the sign-up process or when you first use the Serving Offering, whichever is earlier, and will remain in effect during the relevant Subscription Term or until terminated as specified in the Agreement. This Agreement governs your access to and use of the NCS.

#### 1. DEFINITIONS

- a. **“Administrator User”** means your employee designated by you to serve as technical administrator of the NCS on your behalf. Each Administrator User must complete training and qualification requirements reasonably required by Flytxt.
- b. **“Identity Cube”** means a collection of identity data for an individual that will be granted access to and/or managed by the NCS for the purposes of providing single sign-on, managing passwords or certifying user access. Although Identity Data for user accounts that have been deactivated may remain in the identity management system, those inactive Identity Data’s will not be included in the number of Identity Data licenses in use by you.
- c. **“Maintenance Services”** means the support and maintenance services provided by Flytxt to you pursuant to this Agreement.
- d. **Neon Cloud Service (“NCS”)** means Flytxt’s SaaS software or Neon dX Software which is installed on a public cloud service provider of Flytxt’s choosing. The NCS are not interchangeable to On-Premises, Infrastructure as a Service (IaaS), Platform as a Service (PaaS) unless a separate agreement is executed and the commercials are agreed by and between the parties.
- e. **“Your Content”** means all data and materials provided by you to Flytxt for use in connection with the NCS, including, without limitation, customer applications, data files, and graphics.
- f. **“Other Services”** means all technical and non-technical services performed or delivered by Flytxt under this Agreement, including, without limitation, implementation services and other professional services, training and education services but excluding the access to NCS and the Maintenance Services. Other Services will be provided on a time and material basis at such times or during such periods, as may be specified in a Schedule and mutually agreed to by the parties. All Other Services will be provided on a non-work for hire basis.
- g. **“Permitted Purposes”** shall mean your internal business purposes related to Campaigns.
- h. **“Service Offering Documentation”** means (i) the user guides, online help, release notes, training materials and other documentation provided or made available by Flytxt to you regarding the use or operation of the NCS; (ii) Service Level Agreement (if any) for the Service Offering.
- i. **“Schedule”** is a written document attached to this Agreement or executed separately by Flytxt and you

for the purpose of purchasing NCS under the terms and conditions of this Agreement.

- j. “**Subscription Term**” shall mean duration of the subscription as mutually agreed between the Parties.

## **2. SaaS & NCS**

- 2.1 During the Subscription Term, Flytxt hereby grants you a personal and non-exclusive (*without the right to assign, transfer or sub-license except as may be specifically permitted by this Agreement*) access to use the NCS and Documentation (if any) for the Permitted Purposes and in accordance with the terms and conditions of this Agreement.
- 2.2 You acknowledge that this Agreement is a Software as a Service (SaaS) Agreement and is not interchangeable to either On-Premises, Infrastructure as a Service (IaaS) or Platform as a Service (PaaS) unless a separate agreement is executed and the commercials are agreed by the Parties
- 2.3 You acknowledge that Flytxt will not be delivering copies of the Software, either digitally or physically, to you as part of this Agreement.

## **3. RESTRICTIONS**

You shall not permit anyone to: (i) make the NCS or available to any person other than authorized Identity Cube users, (ii) use or access the NCS to provide service bureau, time-sharing or other computer hosting services to third parties, (iii) modify or create derivative works based upon the NCS or Documentation, (iv) remove, modify or obscure any copyright, trademark or other proprietary notices contained NCS or in the Documentation, (v) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code NCS, or (vi) access the NCS or use the Documentation in order to build a similar product or competitive product. Subject to the limited access granted herein, Flytxt shall own all right, title and interest in and to the NCS services, Documentation, and other deliverables provided under this Agreement, including all modifications, improvements, upgrades, derivative works and feedback related thereto and intellectual property rights therein. You agree to assign all right, title and interest you may have in the foregoing to Flytxt. Your access and use of NCS does not provide you any right to receive a copy of the object code or source code of the software.

## **4. YOUR RESPONSIBILITIES**

- 4.1 Assistance. You shall provide reasonable information and assistance to Flytxt to enable Flytxt to deliver NCS.
- 4.2 Compliance with Laws. You shall comply with all applicable local, state, national and foreign laws in connection with your use of NCS, including those laws related to data privacy, international communications, and the transmission of technical or personal data. You acknowledge that Flytxt exercises no control over the content of the information transmitted by you or the Identity Cube users through NCS. You shall not upload, post, reproduce or distribute any information, software or other material protected by copyright, privacy rights, or any other intellectual property right without first obtaining the permission of the owner of such rights.
- 4.3 Unauthorized Use; False Information. You shall: (a) notify Flytxt immediately of any unauthorized use of any password or user id or any other known or suspected breach of security, (b) report to Flytxt immediately and use reasonable efforts to stop any unauthorized use of NCS that is known or suspected by you or any Identity Cube user, and (c) not provide false identity information to gain access to or use NCS.

- 4.4 Administrator Access. You shall be solely responsible for the acts and omissions of your Administrator Users. Flytxt shall not be liable for any loss of data or functionality caused directly or indirectly by the Administrator Users.
- 4.5 Your Input. You are solely responsible for collecting, inputting and updating all Your Content stored on NCS , and for ensuring that the Your Content does not (i) include anything that actually or potentially infringes or misappropriates the copyright, trade secret, trademark or other intellectual property right of any third party, or (ii) contain anything that is obscene, defamatory, harassing, offensive or malicious. You shall: (i) notify Flytxt immediately of any unauthorized use of any password or user id or any other known or suspected breach of security, (ii) report to Flytxt immediately and use reasonable efforts to stop any unauthorized use of the Service that is known or suspected by you or any Identity Cube user, and (iii) not provide false identity information to gain access to or use the Service.
- 4.6 Ownership and Restrictions. You retain ownership and intellectual property rights in and to Your Content. Flytxt or its licensors retain all ownership and intellectual property rights to the services, Software programs, and anything developed and delivered under the Agreement. Third party technology that may be appropriate or necessary for use with NCS is specified in the program Documentation or ordering document as applicable. Your right to use such third party technology including without limitation the NCS is governed by the terms of the third party technology license agreement specified by Flytxt and not under this Agreement. NCS may use third party software internally for providing the services. Such third party software may not be directly available to you. Such third party software may change to a similar offering later.
- 4.7 Suggestions. Flytxt shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the NCS any suggestions, enhancement requests, recommendation or other feedback provided by you relating to the operation of the NCS

## **5. ORDERS AND PAYMENT**

- 5.1 Orders. You shall order NCS pursuant to an agreed Schedule. All services acquired by you shall be governed exclusively by this Agreement and the applicable Schedule. In the event of a conflict between the terms of a Schedule and this Agreement, the terms of the Schedule shall take precedence.
- 5.2 Invoicing and Payment. Unless otherwise provided in the Schedule, Flytxt shall invoice you for all fees on the Schedule effective date. You shall pay all undisputed invoices within thirty (30) days after you receives the invoice. Except as expressly provided otherwise, fees are non-refundable. All fees are stated in United States Dollars (USD), and must be paid by you to Flytxt in United States Dollars (USD).
- 5.3 Expenses. You will reimburse Flytxt for its reasonable, out-of-pocket travel and related expenses incurred in performing the Other Services. Flytxt shall notify you prior to incurring any such expense. Flytxt shall comply with your travel and expense policy if made available to Flytxt prior to the required travel.
- 5.4 Taxes. All payments mentioned are *exclusive* of applicable taxes thereon, which taxes shall be paid additionally by you. You shall be responsible for payment of all sales and use taxes, value added taxes (VAT), or similar charges relating to your purchase and use of the services.

## **6. TERM (SUBSCRIPTION) AND TERMINATION**

- 6.1 Subscription. The subscription shall begin on the Effective Date and shall continue till the duration of the Subscription Term as defined above, or until terminated by either party as outlined in this Section.
- 6.2 Termination. Either party may terminate this Agreement immediately upon a material breach by the other

party that has not been cured within thirty (30) days after receipt of notice of such breach.

- 6.3 Suspension for Non-Payment. Flytxt reserves the right to suspend delivery of the NCS if you fail to timely pay any undisputed amounts due to Flytxt under this Agreement. Suspension of the NCS shall not release you from the payment obligations under this Agreement. You agree that Flytxt shall not be liable to you or to any third party for any liabilities, claims or expenses arising from or relating to suspension of the NCS resulting from your non-payment.
- 6.4 Suspension for Ongoing Harm. Flytxt reserves the right to suspend delivery of the NCS if Flytxt reasonably concludes that you or an Identity Cube user's use of the NCS is causing immediate and ongoing harm to Flytxt or others. In the extraordinary case that Flytxt must suspend delivery of the NCS, Flytxt shall immediately notify you of the suspension and the parties shall diligently attempt to resolve the issue. Flytxt shall not be liable to you or to any third party for any liabilities, claims or expenses arising from or relating to any suspension of the NCS in accordance with this Section. Nothing in this Section will limit Flytxt's rights under Section 6.5 below.
- 6.5 Effect of Termination.
- (a) Upon termination of this Agreement or expiration of the Subscription Term, Flytxt shall immediately cease providing the NCS and all usage rights granted under this Agreement including commercial proposals and discounts, if any, shall cease. The Parties agree that there will be no rollover of the terms and conditions, commercial proposals and/or discounts if any, upon the termination of the Agreement.
  - (b) If Flytxt terminates this Agreement due to a breach by you, then you shall immediately pay to Flytxt all amounts due under this Agreement.
  - (c) Upon termination of this Agreement and upon subsequent written request by the disclosing party, all Confidential Information in receipt of the recipient shall either be immediately returned or destroyed, and each Party shall provide a written certification of such destruction or return. For all purposes of this Agreement, the term "Confidential Information" shall collectively refer to all non-public information or material disclosed or provided by one party to the other, either orally or in writing, or obtained by the recipient party from a third party or any other source, concerning any aspect of the business or affairs of the other party or its "affiliates", including without limitation, any information or material pertaining to products, formulae, specifications, designs, processes, plans, policies, procedures, employees, work conditions, legal and regulatory affairs, assets, inventory, discoveries, trademarks, patents, manufacturing, packaging, distribution, sales, marketing, expenses, financial statements and data, customer and supplier lists, raw materials, costs of goods and relationships with third parties. Confidential Information also includes any notes, analyses, compilations, studies or other material or documents prepared by the recipient party which contain, reflect or are based, in whole or in part, on the Confidential Information. Notwithstanding the foregoing, Confidential Information shall not include information or material that (i) is publicly available or becomes publicly available through no action or fault of the recipient party, (ii) was already in the recipient party's possession or known to the recipient party prior to being disclosed or provided to the recipient party by or on behalf of the other party, provided, that, the source of such information or material was not bound by a contractual, legal or fiduciary obligation of confidentiality to the non-disclosing party or any other party with respect thereto, (iii) was or is obtained by the recipient party from a third party, provided, that, such third party was not bound by a contractual, legal or fiduciary obligation of confidentiality to the non-disclosing party or any other party with respect to such information or material, or (iv) is independently developed by the recipient party without reference to the Confidential Information. The receiving party may permit its legal counsel to retain one archival copy of such information in the event of a subsequent dispute between the parties.

## **7. SERVICE LEVEL AGREEMENT**

The Service Level Agreement (“SLA”) for NCS will be executed separately by Flytxt and you. The SLA sets forth your sole remedies for availability or quality of the NCS Services including any failure to meet any guarantee set forth in the SLA.

## **8. WARRANTIES**

- 8.1 Warranty. Flytxt represents and warrants that it will provide NCS in a professional manner consistent with general industry standards and that NCS will perform substantially in accordance with the Documentation. For any breach of a warranty, your exclusive remedy shall be as provided in Section 6, Term and Termination.
- 8.2 FLYTXT WARRANTS THAT NCS WILL PERFORM IN ALL MATERIAL RESPECTS IN ACCORDANCE WITH THE DOCUMENTATION. FLYTXT DOES NOT GUARANTEE THAT THE NCS WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT FLYTXT WILL CORRECT ALL NCS SERVICES ERRORS. YOU ACKNOWLEDGE THAT FLYTXT DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT NCS SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. THIS SECTION SETS FORTH THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY FLYTXT (EXPRESS OR IMPLIED) WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT. NEITHER FLYTXT NOR ANY OF ITS LICENSORS OR OTHER SUPPLIERS WARRANT OR GUARANTEE THAT THE OPERATION OF THE SUBSCRIPTION SERVICE WILL BE UNINTERRUPTED, VIRUS-FREE OR ERROR-FREE, NOR SHALL FLYTXT OR ANY OF ITS SERVICE PROVIDERS BE LIABLE FOR UNAUTHORIZED ALTERATION, THEFT OR DESTRUCTION OF YOUR OR ANY USER’S DATA, FILES, OR PROGRAMS.

## **9. LIMITATIONS OF LIABILITY**

NEITHER PARTY SHALL BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST BUSINESS, PROFITS, DATA OR USE OF ANY SERVICE, INCURRED BY EITHER PARTY OR ANY THIRD PARTY IN CONNECTION WITH THIS NCS AGREEMENT, REGARDLESS OF THE NATURE OF THE CLAIM (INCLUDING NEGLIGENCE), EVEN IF FORESEEABLE OR THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NEITHER PARTY’S AGGREGATE LIABILITY FOR DAMAGES UNDER THIS NCS AGREEMENT, REGARDLESS OF THE NATURE OF THE CLAIM (INCLUDING NEGLIGENCE), SHALL EXCEED THE FEES PAID OR PAYABLE BY YOU UNDER THIS NCS AGREEMENT DURING THE 12 MONTHS PRECEDING THE DATE THE CLAIM AROSE.

## **10. INDEMNIFICATION**

- 10.1 Indemnification by Flytxt. If a third party makes a claim against you that the NCS infringes any patent, copyright or trademark, or misappropriates any trade secret, or that Flytxt’s negligence or willful misconduct has caused bodily injury or death, Flytxt shall defend you and your directors, officers and employees against the claim at Flytxt’s expense and Flytxt shall pay all losses, damages and expenses (including reasonable attorneys’ fees) finally awarded against such parties or agreed to in a written settlement agreement signed by Flytxt, to the extent arising from the claim. Flytxt shall have no liability for any claim based on (a) Your Content, (b) modification of the NCS Services not authorized by Flytxt,

or (c) use of the NCS Services other than in accordance with the Documentation and this NCS Agreement.

- 10.2 Indemnification by you. If a third party makes a claim against Flytxt that the Your Content infringes any patent, copyright or trademark, or misappropriates any trade secret, you shall defend Flytxt and its directors, officers and employees against the claim at the your expense and you shall pay all losses, damages and expenses (including reasonable attorneys' fees) finally awarded against such parties or agreed to in a written settlement agreement signed by you, to the extent arising from the claim.
- 10.3 Conditions for Indemnification. A party seeking indemnification under this section shall (a) promptly notify the other party of the claim, (b) give the other party sole control of the defense and settlement of the claim, and (c) provide, at the other party's expense for out-of-pocket expenses, the assistance, information and authority reasonably requested by the other party in the defense and settlement of the claim.

## 11. CONFIDENTIALITY

- 11.1 Definition. "**Confidential Information**" means any information disclosed by a party to the other party, directly or indirectly, which, (a) if in written, graphic, machine-readable or other tangible form, is marked as "confidential" or "proprietary," (b) if disclosed orally or by demonstration, is identified at the time of initial disclosure as confidential and is confirmed in writing to the receiving party to be "confidential" or "proprietary" within thirty (30) days of such disclosure, (c) is specifically deemed to be confidential by the terms of this Agreement, or (d) reasonably appears to be confidential or proprietary because of the circumstances of disclosure and the nature of the information itself. Confidential Information will also include information disclosed by third parties to a disclosing party under an obligation of confidentiality. Subject to the display of the Your Content as contemplated by this Agreement, Your Content is deemed as your Confidential Information. Flytxt NCS and Documentation are deemed Confidential Information of Flytxt.
- 11.2 Confidentiality. During the term of this Agreement and for one (1) years thereafter, each party shall treat as confidential all Confidential Information of the other party, shall not use such Confidential Information except to exercise its rights and perform its obligations under this Agreement, and shall not disclose such Confidential Information to any third party. Without limiting the foregoing, each party shall use at least the same degree of care, but not less than a reasonable degree of care, it uses to prevent the disclosure of its own confidential information to prevent the disclosure of Confidential Information of the other party. Each party shall promptly notify the other party of any actual or suspected misuse or unauthorized disclosure of the other party's Confidential Information. Neither party shall reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which embody the other party's Confidential Information and which are provided to the party hereunder. Each party may disclose Confidential Information of the other party on a "need-to-know" basis to its contractors who are subject to confidentiality agreements requiring them to maintain such information in confidence and use it only to facilitate the performance of their services on behalf of the receiving party.
- 11.3 Exceptions. Confidential Information excludes information that: (a) is known publicly at the time of the disclosure or becomes known publicly after disclosure through no fault of the receiving party, (b) is known to the receiving party, without restriction, at the time of disclosure or becomes known to the receiving party, without restriction, from a source other than the disclosing party not bound by confidentiality obligations to the disclosing party, or (c) is independently developed by the receiving party without use of the Confidential Information as demonstrated by the written records of the receiving party. The receiving party may disclose Confidential Information of the other party to the extent such disclosure is required by law or order of a court or other governmental authority, provided that the receiving party shall use reasonable efforts to promptly notify the other party prior to such disclosure to enable the disclosing party to seek a protective order or otherwise prevent or restrict such disclosure. Each party may disclose

the existence of this Agreement and the relationship of the parties, but agrees that the specific terms of this Agreement will be treated as Confidential Information; provided, however, that each party may disclose the terms of this Agreement to those with a need to know and under a duty of confidentiality such as accountants, lawyers, bankers and investors.

## 12. GENERAL PROVISIONS

- 12.1 Non-Exclusive Service. You acknowledges that NCS is provided on a non-exclusive basis. Nothing shall be deemed to prevent or restrict Flytxt's ability to provide the NCS or other technology, including any features or functionality first developed for you, to other parties.
- 12.2 Personal Data. You hereby acknowledge and agree that Flytxt's performance of this Agreement may require Flytxt to process, transmit and/or store your personal data or the personal data of your employees and Affiliates. By submitting personal data to Flytxt, you agree that Flytxt and its Affiliates may process, transmit and/or store personal data only to the extent necessary for, and for the sole purpose of, enabling Flytxt to perform its obligations to under this Agreement. In relation to all Personal Data provided by or through you to Flytxt, you will be responsible as sole Data Controller for complying with all applicable data protection or similar laws such as EU Directive 95/46/EC and laws implementing that Directive that regulate the processing of Personal Data and special categories of data as such terms are defined in that Directive. You agree to obtain all necessary consents and make all necessary disclosures before including Personal Data in Content. You confirm that you are solely responsible for any Personal Data that may be contained in Content, including any information which any Flytxt NCS User shares with third parties on the your behalf. You are solely responsible for determining the purposes and means of processing your Personal Data by Flytxt under this Agreement, including that such processing according to your instructions will not place Flytxt in breach of applicable data protection laws. Prior to processing, you will inform Flytxt about any special categories of data contained within your Personal Data and any restrictions or special requirements in the processing of such special categories of data, including any cross border transfer restrictions. You are responsible for ensuring that the Flytxt NCS meets such restrictions or special requirements. Flytxt to process any Personal Data that meets the requirements set forth in this Section according to these Terms of Use.
- 12.3 Flytxt's Personal Data Obligations. In performing NCS Services, Flytxt will comply with the *Flytxt Privacy Policy*, which is available at <https://www.flytxt.com/privacypolicy/> and incorporated herein by reference. The *Flytxt Privacy Policy* is subject to change at Flytxt's discretion; however, Flytxt's policy changes will not result in a material reduction in the level of protection provided for your data during the period for which fees for the services have been paid. Flytxt will only process your Personal Data in a manner that is reasonably necessary to provide NCS and only for that purpose. Flytxt will only process your Personal Data in delivering Flytxt NCS Services. You agree to provide any notices and obtain any consent related to Flytxt's use of the data for provisioning NCS Services, including those related to the collection, use, processing, transfer and disclosure of personal information. You shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and retain ownership of all of your data.
- 12.4 Assignment. Neither party may assign this Agreement or any right under this Agreement, without the consent of the other party, which consent shall not be unreasonably withheld or delayed. This Agreement shall be binding upon and inure to the benefit of the parties' successors and permitted assigns. Either party may employ sub-contractors in performing its duties under this Agreement, provided, however, that such party shall not be relieved of any obligation under this Agreement.
- 12.5 Notices. Any notice to be given by any party to this Agreement shall be in writing and shall be deemed to be duly served if delivered by hand, prepaid registered speed post with acknowledgement requested or through a delivery service/courier, fax or email. You must direct legal notices or other correspondence to Flytxt B.V., Office 116, Floor 1, Building 13, Dubai Internet City, Dubai, UAE, or [legal@flytxt.com](mailto:legal@flytxt.com)

Attention: Legal.

Any notice given as provided by this Clause shall be deemed received by the party to whom it is addressed when:

- a. In the case of any notice delivered by hand, when so delivered;
- b. If sent by prepaid post on the 5th clear day after the date of posting;
- c. In the case of any notice sent by delivery service/courier, when the same is so delivered;
- d. In the case of fax or email, when the fax or email is received.

- 12.6 Force Majeure. Each party will be excused from performance of its obligations under this Agreement if and to the extent that such performance is hindered or prevented directly or indirectly by reason of any earthquake, riot, armed conflict, accident, unavailability or breakdown of normal means of transport, strike, lock out, labour disturbance, government action, Act of God or any other matter whatsoever beyond its reasonable control ("Force Majeure Event"). The party claiming the Force Majeure Event will promptly notify the other in writing of the reasons for the delay or stoppage (and the likely duration) and will take all reasonable steps to overcome the delay or stoppage. If the party claiming the Force Majeure Event has complied with this Clause its performance under this Agreement will be suspended for the period that the Force Majeure Event continues, and the party will have an extension of time for performance which is reasonable and in any event equal to the period of delay or stoppage. If the delay or stoppage caused by a Force Majeure Event continues for more than sixty (60) continuous days, either party may terminate this Agreement with immediate effect on giving written notice to the other and neither party will be liable to the other for such termination.
- 12.7 Waiver. No waiver shall be effective unless it is in writing and signed by the waiving party. The waiver by either party of any breach of this Agreement shall not constitute a waiver of any other or subsequent breach.
- 12.8 Severability. If any term of this Agreement is held to be invalid or unenforceable, that term shall be reformed to achieve as nearly as possible the same effect as the original term, and the remainder of this Agreement shall remain in full force.
- 12.9 Entire Agreement. This Agreement (including all Schedules and exhibits) contains the entire agreement of the parties and supersedes all previous oral and written communications by the parties, concerning the subject matter of this Agreement. This Agreement may be amended solely in a writing signed by both parties.
- 12.10 Survival. Sections 3, 6, and 8 through 12 of this Agreement shall survive the expiration or termination of this Agreement for any reason.
- 12.11 Publicity. Flytxt may include your name and logo in its customer lists and on its website. Flytxt shall coordinate its efforts with appropriate communications personnel in your organization to secure approval of the press release if necessary.
- 12.12 No Third Party Beneficiaries. This Agreement is an agreement between the parties, and confers no rights upon either party's employees, agents, contractors, partners of customers or upon any other person or entity.
- 12.13 Independent Contractor. The parties have the status of independent contractors, and nothing in this Agreement nor the conduct of the parties will be deemed to place the parties in any other relationship. Except as provided in this Agreement, neither party shall be responsible for the acts or omissions of the other party or the other party's personnel.



- 12.14 Statistical Information: Flytxt may aggregate data and information related to the performance, operation and use of the NCS to create statistical analyses, to perform benchmarking, to perform research and development and to perform other similar activities (“Service Improvements”). We will not incorporate Customer Data in Service Improvements in a form that could identify You or Your customers and we will use industry standard techniques to anonymize Customer Data prior to performing Service Improvements. We retain all intellectual property rights in Service Improvements and may make them publicly available.
- 12.15 Governing Law. This Agreement shall be governed by the laws of the Netherlands, excluding its conflict of law principles. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.
- 12.16 Compliance with Laws. The Parties shall comply with all applicable local, state, national and foreign laws in connection with its delivery of NCS Services, including those laws related to data privacy, international communications, and the transmission of technical or personal data.
- 12.17 Personnel & Non-Solicitation (Anti-Poaching / Non-Poaching): The Parties agrees that they will not, directly or indirectly, hire, solicit or attempt to hire or solicit for employment, consultancy or otherwise any of either parties personnel who are involved in the provision of Services as part of this Agreement for a period of two (2) years after the last date on which such person has been involved with the provision of Services to you. The Parties agrees that, in the event of a breach or violation of this covenant of Non-Solicitation, the party breaching the terms (“Breaching Party”) shall be liable to compensate the party who is not breaching the terms (“Non-Breaching Party”) for all damages, including without limitation, consequential damages, not limited to lost profits, expenses incurred to replace the employee, finder’s fee, sign-on bonuses, and compensation, remuneration and/or benefits premiums paid to employees, independent contractors and consultants to secure their service(s) or to replace the business relationship(s). The payment of such damages shall not limit, impair or diminish the Non-Breaching Party’s right to seek and obtain (i) any appropriate equitable relief (including but not limited to specific performance, temporary restraining order and temporary and permanent injunction; AND (ii) other monetary relief, and other relief, at law or in equity, for other causes of action which may have resulted from the breach or violation. Such compensation from the Breaching Party to the Non-Breaching Party shall be paid within thirty (30) days from the date such breach occurred; or as per the payment terms and conditions set forth between the Parties.
- 12.18 Dispute Resolution. The parties therefore agree that they will, at all times, act in good faith, and make all attempts to resolve all differences howsoever arising out of or in connection with this Agreement by mutual discussion. However, in the event of any disputes or differences among the parties connected with, arising out of, under or in relation with this Agreement (“a Dispute”), the parties shall attempt, for a period of thirty (30) days from the receipt of a notice from the other party of the existence of a Dispute, to settle it by mutual discussions between the parties. Such discussion may be held telephonically if travel is impractical for either party. If the discussion between the parties fails to resolve a Dispute, the parties shall resort to arbitration by a sole arbitrator jointly appointed by the parties. The parties agree that until the arbitration proceedings are complete, they shall not take the Dispute to a court of law other than to obtain immediate injunctive relief. The arbitration shall be conducted at Dubai, shall be in English and shall be governed by the provisions of Arbitration and Conciliation Act, 1996. The decision of the arbitrator(s) shall be final and binding on both the parties.