

## STANDARD CUSTOMER TERMS AND CONDITIONS

### 1 **Introduction and Definitions.**

- 1.1 Xpertek Contact has been appointed by Skyfii to provide and manage certain aspects of the Services, including, but not limited to, the implementation of the Services at the Customer's sites and the invoicing and collection of the Service Fees relating thereto.
- 1.2 In this Agreement, unless the contrary intention appears:
- 1.2.1 **"Additional Services"** means any services agreed by the Parties in accordance with clause 7.
- 1.2.2 **"Affiliates"** means, in respect of a company or other business entity, any company or other business entity Controlled by, Controlling, or under the common Control of a third party that also Controls that company or other business entity from time to time.
- 1.2.3 **"Analytics Services"** means Usage Data query and reporting services supplied through Skyfii IO, as set out in the Special Conditions and/or the Proposal.
- 1.2.4 **"Agreement"** means these terms and conditions, the Contract Details and the Proposal.
- 1.2.5 **"Commencement Date"** means the date this Agreement is signed by both Parties.
- 1.2.6 **"Commissioned Material"** means all material to be delivered pursuant to a Special Condition or the Proposal that is specifically identified in such Special Condition or Proposal as "Commissioned Material", being material in which Intellectual Property Rights are assigned to Customer in accordance with this Agreement.
- 1.2.7 **"Confidential Information"** means any information in any form whatsoever (including oral, written, and electronic information) of a personal, technical, business, corporate or financial nature of a Party that has either been marked as confidential or due to its character or nature, or manner of its disclosure, a reasonable person would consider to be as confidential. Without limitation, confidential information of Customer includes details of the customer's business and technical processes and confidential information of Skyfii includes the personnel, policies and business strategies of Skyfii and the terms of this Agreement.
- 1.2.8 **"Content Delivery Services"** means the provision of Marketing Material facilitation services, as set out in the Special Conditions and/or the Proposal.
- 1.2.9 **"Content Format"** means the formats set out in the Special Conditions and/or the Proposal and includes any or all of (a) email, (b) SMS, (c) video, (d) images and/or (e) Apple Wallet Passes.
- 1.2.10 **"Content Method"** means the methods set out in the Special Conditions and/or the Proposal and includes any or all of (a) email, (b) SMS, and/or (c) WiFi.
- 1.2.11 **"Contract Details"** means the cover page of this Agreement, expressly including any Special Conditions and/or the order form.
- 1.2.12 **"Control"** means, in relation to the Customer, the direct or indirect power to direct or cause the direction of the management and policies of a company or other business entity, whether through ownership of fifty per cent (50%) or more of the voting interest, by contract, or otherwise (and Controlled and Controlling are to be construed accordingly).
- 1.2.13 **"Customer Material"** means any material that Customer supplies to Skyfii in order for Skyfii to properly supply the Services (including any Customer trade marks), in which Customer owns or is licensed to use Intellectual Property Rights, and includes without limitation Commissioned Material.
- 1.2.14 **"Data Science Consultancy Services"** means the provision of data science consultancy services and any associated deliverables, as set out and further defined in the Special Conditions, the Proposal and/or any agreed upon statement of work during the Skyfii IO Access Term.
- 1.2.15 **"Emergency Interruption"** means a disruption or suspension of any Services immediately necessary

- to maintain the integrity, security, safety or quality of any part of the Services for Customer or any other customer of Skyfii.
- 1.2.16 **"End User"** means a person that has provided certain information about themselves to Skyfii, or which Skyfii has received from Customer, for the purpose of registering to use Skyfii Associated Facilities.
- 1.2.17 **"End User Personal Information"** means any personal information (as that term is defined in the Privacy Act 1988 (Cth) and/or the Protection of Personal Information Act, 2013, whichever is applicable) collected about or in relation to an End User in connection with that person's use of the Skyfii Associated Facilities or the provision of Services.
- 1.2.18 **"Force Majeure"** means a circumstance beyond the reasonable control of the Parties which results in a Party being unable to observe or perform on time an obligation under this Agreement. Such circumstances will include but will not be limited to natural disasters, acts of war, terrorism, civil commotion, industrial action, malicious software or hardware attack or failure of third party network facilities.
- 1.2.19 **"Guest WiFi Services"** means the registration and verification of End Users by the Registration Portal, in order to allow access by End Users to the Internet via Network Facilities, in accordance with the Special Conditions and/or the Proposal.
- 1.2.20 **"Intellectual Property Rights"** means all intellectual property rights, whether registered or unregistered anywhere in the world, including:
- 1.2.20.1 patents, copyright, rights in circuit layouts, registered designs, trademarks and the right to have confidential information kept confidential; and
- 1.2.20.2 any application or right to apply for registration of any of those rights.
- 1.2.21 **"Marketing Materials"** means the sending by the Customer of promotional materials to End Users in the Content Format via the Content Methods, in connection with the Customer's receipt of Content Delivery Services.
- 1.2.22 **"Network Facilities"** means any computer network hardware and software which are in any way associated with the Services.
- 1.2.23 **"Network Services"** means services for the remote monitoring and management of Network Facilities hardware and software supplied by Skyfii as set out in the Special Conditions and/or the Proposal.
- 1.2.24 **"Non-excludable Condition"** means an implied condition or warranty the exclusion of which from a contract would contravene any statute (including the Consumer Protection Act, 2008) or cause any part of this Agreement to be void.
- 1.2.25 **"Party"** means either Skyfii (or Xpertek Contact, as the case may be) or Customer as the context dictates and **"Parties"** means both of them.
- 1.2.26 **"Proposal"** means the proposal (if any) by Skyfii to the Customer dated on or around the date of this Agreement which:
- 1.2.26.1 sets out further details on the Services to be provided under this Agreement, along with the Service Fees and any Service Level Targets; and
- 1.2.26.2 may incorporate further documents by reference, for example, Skyfii's standard technical, commercial and operational procedures.
- 1.2.27 **"Recognised Device"** means a wireless communications device that by means of an automated function inherent in the design of the device communicates with, and is uniquely identified by, Skyfii Associated Facilities.
- 1.2.28 **"Registration Portal"** means the registration and verification webpage which all End Users must transact with before being granted access to Network Facilities.
- 1.2.29 **"Scheduled Interruption"** means a disruption or suspension of any Services in respect of which Skyfii has given notice to Customer, including for maintenance or improvement to any Services.
- 1.2.30 **"Services"** means the services to be provided by Skyfii to Customer under this Agreement, as set out in the Contract Details and/or the Proposal and/or order form or agreed under clause 6.
- 1.2.31 **"Service Credit"** means a credit amount, expressed in South African Rands, which may be issued by Skyfii from time to time in accordance with a Special

Condition or the Proposal, which Customer may set off against Services Fees it would be otherwise obliged to pay to Skyfii under this Agreement.

1.2.32 **"Services Fees"** means the fee or fees specified in the Contract Details and/or the Proposal for the supply of the Services under this Agreement.

1.2.33 **"Service Level Targets"** means targets (if any) for Skyfii in respect of the way in which Skyfii will supply certain Services, that are specified in the Special Conditions and/or the Proposal.

1.2.34 **"Skyfii"** means Skyfii Group Pty Ltd (ACN 165 152 241) of Level 1, 34-36 Oxford Street, Darlinghurst NSW 2010, and a reference to Skyfii may include a reference to Xpertek Contact.

1.2.35 **"Skyfii Associated Facilities"** means any facilities associated with Skyfii (including the Network Facilities and facilities owned or operated by third parties) which End Users may use in connection with the Services.

1.2.36 **"Skyfii IO"** means Skyfii's cloud-hosted software service for access to, and management of, Analytics Services, Guest WiFi Services and Content Delivery Services (if provided), as updated, revised and improved by Skyfii from time to time.

1.2.37 **"Skyfii IO Access Term"** means the period of time specified in the Contract Details.

1.2.38 **"Skyfii IO Credentials"** means any username and password or other security credentials that Customer must provide when accessing Skyfii IO.

1.2.39 **"Skyfii Material"** means any material in which Intellectual Property Rights exist, other than Commissioned Material, created, written or otherwise brought into existence by or on behalf of Skyfii in the course of, or in connection with, the supply of Services, or material used by Skyfii in the course of supplying Services in which Skyfii owns or is licensed to use Intellectual Property Rights, or material developed by or on behalf of Skyfii independently of this Agreement.

1.2.40 **"Skyfii Privacy Policy"** means Skyfii's privacy policy (as amended from time to time), published by Skyfii on its website at <http://skyfii.io/privacy-policy/>.

1.2.41 **"Skyfii Terms of Use"** means the terms of use (as amended from time to time) pursuant to which Skyfii

interacts with End Users, published by Skyfii on its website at <http://skyfii.io/terms-and-conditions/>.

1.2.42 **"Special Condition"** means any special conditions stated in the Contract Details and/or the Proposal.

1.2.43 **"Tax"** means any and all taxes (including VAT), duties and other charges imposed or levied by any authority in connection with the Services.

1.2.44 **"Third Party Product"** means any product (including any hardware, software or material) resold or resupplied to Customer by Skyfii, that incorporates the Intellectual Property Rights of a third party, where Customer's right to use such Intellectual Property Rights is granted by the manufacturer or distributor of the product.

1.2.45 **"Usage Data"** means all data and information, other than End User Personal Information, about or associated with the operation of Skyfii Associated Facilities that is collected, generated, processed, handled or dealt with through, or in the course of providing, or about, the Services to Customer, and includes statistics and data supplied by or on behalf of the Customer and statistics and data about the interaction of End Users and Recognised Devices with the Skyfii Associated Facilities.

1.2.46 **"Xpertek Contact"** means Xpertek Contact Proprietary Limited 2005/006717/07, of 7 Stirrup Lane, Woodmead Office Park, Woodmead, Johannesburg, and includes a reference to Skyfii, where the context requires.

1.2.47 **"Xpertek Digital Broadsheet Services"** means the software applications and programmes, and associated functionality, as developed by Xpertek Contact and as determined by Xpertek Contact, in Xpertek Contact's sole and absolute discretion from time to time, which for the purposes of this Agreement shall be deemed to be an Xpertek Contact Additional Service and may be provided to the Customer directly by Xpertek Contact in terms of clause 9.

## 2 Services.

2.1 This Agreement establishes a framework under which Customer may order Services from Skyfii, by selecting one or more Services in the Contract Details.

- 2.2 On and from the Commencement Date, Skyfii will use reasonable commercial efforts to provide the Services to Customer in accordance with this Agreement, including the Proposal.
- 2.3 Skyfii will provide the Services with reasonable care and skill and in compliance with all laws.
- 2.4 The Parties may agree in writing to:
  - 2.4.1 amend the Services supplied under this Agreement (including by amending or adding a Special Condition); and
  - 2.4.2 add further Services to this Agreement.
- 2.5 Skyfii may unilaterally amend the Services supplied under this Agreement:
  - 2.5.1 to increase the Services Fees, where the variation is reasonably required to reflect an increase in Skyfii's operational costs;
  - 2.5.2 on each anniversary of the Commencement Date, to increase the Services Fees by no more than 5%; and
  - 2.5.3 in all other cases, immediately where operational or legal requirements so require.
- 2.6 Skyfii will use reasonable efforts to meet any applicable Service Level Targets. Skyfii will not have failed to reach a Service Level Target to the extent such failure is caused by:
  - 2.6.1 an act or omission of Customer or any third party;
  - 2.6.2 any failure, defect or problem in any system or network that is not within the immediate control of Skyfii;
  - 2.6.3 the occurrence of a Force Majeure event; or
  - 2.6.4 any Scheduled Interruption or Emergency Interruption.
- 2.7 If Customer receives a Service Credit in respect of a failure by Skyfii to meet the Service Level Target, that Service Credit is Customer's sole and exclusive remedy in respect of that failure.

### 3 **License to Access.**

- 3.1 Subject to payment of the Services Fee, Skyfii grants a non-exclusive licence to Customer to access Skyfii IO during the Skyfii IO Access Term. Customer may

also grant access to Skyfii IO to those of Customer's employees, directors, agents and subcontractors who require such access for Customer's internal business purposes.

- 3.2 The licence granted to Customer in clause 3.1 may not be transferred to any party without Skyfii's prior written consent, and Customer acknowledges that Skyfii may immediately terminate the provision of these Services, including the licence, without liability if any unauthorised transfer of this licence is made or attempted to be made.

- 3.3 Customer acknowledges that Skyfii IO may only be accessed by the holder of valid Skyfii IO Credentials, and that:

- 3.3.1 Customer is solely responsible for maintaining the confidentiality and security of Skyfii IO Credentials;

- 3.3.2 Customer must immediately notify Skyfii if Customer suspects or is aware that the confidentiality or security of any Skyfii IO Credentials have been compromised; and

- 3.3.3 Skyfii may suspend or cancel any Skyfii IO Credentials if Skyfii suspects for any reason that the confidentiality or integrity of those Skyfii Credentials have been compromised, and Skyfii will have no liability to Customer or any other person arising from such suspension or cancellation.

- 3.4 Skyfii will make reasonable commercial efforts to make Skyfii IO available for use by Customer at all times, except where:

- 3.4.1 a Scheduled Interruption or Emergency Interruption affecting Skyfii IO occurs; or

- 3.4.2 any event beyond the reasonable control of Skyfii disrupts the availability of Skyfii IO, including without limitation any interruption to any third party service used by Skyfii in the supply of Skyfii IO.

### 4 **Guest WiFi Services.**

- 4.1 Where Guest WiFi Services are selected in the Contract Details, subject to payment of the Services Fees, Skyfii will provide, during the Skyfii IO Access Term, the Guest WiFi Services to Customer in accordance with this Agreement, including the Proposal.

4.2 On any attempt to connect with Skyfii Associated Facilities, an End User will be diverted to the Registration Portal.

4.3 The Registration Portal provides for the:

4.3.1 collection of registration data from any person who wishes to become an End User; and

4.3.2 granting of access to an internet connection via Skyfii Associated Facilities to End Users.

4.4 Customer acknowledges that, unless the parties otherwise agree in writing, the sole purpose of the Guest WiFi Services is to provide a registration and verification system for End Users.

4.5 Customer acknowledges that, unless the parties otherwise agree in writing:

4.5.1 the sole responsibility for the carriage of data by End Users is borne by Customer and the third party internet service providers with which Customer has arranged its Internet connections; and

4.5.2 use by End Users of the Network Facilities will involve the uploading and downloading of data via Customer's Internet connections, and that such use may cause Customer to incur usage or other charges from the third party internet service providers of those Internet connections. Customer agrees that Skyfii has no liability or obligation to Customer for any reason whatsoever in connection with any costs or liabilities Customer may incur in connection with the use of Customer's Internet connections by any End Users or any other person.

**5 Analytics Services.**

5.1 Where Analytics Services are selected in the Contract Details, subject to payment of the Services Fees, Skyfii will provide, during the Skyfii IO Access Term, the Analytics Services to Customer through Skyfii IO in accordance with this Agreement, including the Proposal.

5.2 Analytics Services will enable Customer to perform certain querying, analysis and reporting of Usage Data and data about Recognised Devices associated with End Users.

5.3 Customer acknowledges that End User Personal Information, Usage Data and data about Recognised

Devices are collected by Skyfii using automatic means in the course of operating the Skyfii Associated Facilities, or may be provided by Customer of third party sources, and Skyfii does not warrant the accuracy, completeness of reliability of:

5.3.1 any End User Personal Information, Usage Data or data about Recognised Devices; or

5.3.2 any data generated by Analytics Services.

5.4 Customer acknowledges that it uses any output of Analytics Services at its own risk, and Customer:

5.4.1 cannot rely upon the accuracy, completeness or reliability of any output of Analytics Services; and

5.4.2 indemnifies Skyfii against any claim, loss, costs or liability suffered by Customer or any other person arising from any inaccuracy, incompleteness or error in:

5.4.2.1 any End User Personal Information, Usage Data or data about Recognised Devices, the reliance upon of which has resulted in the relevant claim, loss, cost or liability; or

5.4.2.2 any output of Analytics Services.

5.5 Customer acknowledges that all Intellectual Property Rights in the form of expression of any output or report of Analytics Services are owned by Skyfii.

5.6 Skyfii grants to Customer a non-exclusive, worldwide, perpetual, irrevocable licence to use, reproduce, modify and adapt all Intellectual Property Rights referred to in clause 5.5.

**6 Content Delivery Services.**

6.1 Where Content Delivery Services are selected in the Contract Details, subject to payment of the Services Fees, Skyfii will provide, during the Skyfii IO Access Term, the Content Delivery Services in accordance with this Agreement, including the Proposal.

6.2 When collecting End User registration data under clause 4.3, Skyfii will also collect marketing preferences for each End User via the Registration Portal. Marketing preferences will ordinarily be collected on a simple opt-in/opt-out basis in accordance with the Special Conditions or the Proposal.



- 6.3 During the Skyfii IO Access Term, Customer will be permitted (pursuant to its receipt of the Content Delivery Services) to send targeted Marketing Materials and content to all or some of the relevant opted-in End Users in accordance with the Special Conditions or the Proposal.
- 6.4 The Service Fees for Content Delivery Services are calculated and consumed by Customer in accordance with the mechanisms set out in the Special Conditions and/or the Proposal. Ordinarily, this will be by purchase of monthly credits on a prepaid basis or inclusive in a minimum monthly fee for the use of the Content Delivery Services. Additional pay-as-you-go credits may be purchased in accordance with the Special Conditions and/or the Proposal.
- 6.5 Skyfii may amend the basis on which credits are calculated and consumed from time to time, but no more than once per quarter. Credits do not roll-over from month to month.
- 6.6 In providing Content Delivery Services, Skyfii will comply with the Privacy Policy, as amended from time to time. In receiving the Content Delivery Services, the Customer must comply with any and all applicable laws.
- 7 Network Services.**
- 7.1 Where Network Services are selected in the Contract Details, subject to payment of the Services Fees, during the Skyfii IO Access Term, Skyfii will provide Network Services to Customer in accordance with this Agreement, including the Proposal.
- 7.2 Customer acknowledges that in order for Skyfii to properly supply the Network Services, Customer must provide Skyfii with all access (including remote and on-site access) to the Network Facilities as Skyfii reasonably requires from time to time.
- 7.3 Subject to clause 7.4, Skyfii acknowledges that it must comply with all reasonable security policies or regulatory requirements of Customer of which Skyfii is made aware from time to time, provided such policies do not derogate from this Agreement.
- 7.4 Customer acknowledges that Skyfii will have no liability for any failure to supply Network Services to the extent such failure is caused or contributed to by Skyfii's compliance with any policies or regulatory obligations referred to in clause 7.3.
- 7.5 Customer acknowledges that during the term of supply of Network Services, Skyfii will:
- 7.5.1 provide Guest WiFi Services, such that End Users will be able to access the Internet and transmit and receive data by means of the Network Facilities; and
- 7.5.2 collect and use Usage Data in accordance with the Agreement.
- 7.6 Customer acknowledges that Customer must pay all costs, including without limitation data access costs, associated with the use and operation of the Network Facilities in accordance with clause 7.5 and otherwise in accordance with the Agreement.
- 8 Data Science Consultancy Services**
- 8.1 Where Data Science Consultancy Services are selected in the Contract Details, subject to payment of the Services Fees, Skyfii will provide, during the Skyfii IO Access Term and at such times as the parties reasonably agree, the Data Science Consultancy Services to Customer in accordance with this Agreement, including the Proposal, and any agreed upon statement of work during the Skyfii IO Access Term.
- 8.2 Where the Data Science Consultancy Services are provided by reference to an agreed pool of hours, such hours will expire at the end of the period stated or, where no period is stated, at the end of the term of the Skyfii IO Access Term. In all other cases, Data Science Consultancy Services are provided and charged at the Time and Materials Rate.
- 8.3 Customer must provide to Skyfii all assistance, information and materials ('Customer Resources') necessary to enable Skyfii to provide the Data Science Consultancy Services in accordance with the agreed specifications. Skyfii will provide the Data Science Consultancy Services and any deliverables with reasonable care and skill, however Customer acknowledges that it uses any deliverables at its own risk. Skyfii will have no liability to Customer or any third party for any delay, error, damage, loss or liability to the extent it relates to:
- 8.3.1 an error or mistake in the Customer Resources;

- 8.3.2 a delay or failure by the Customer to promptly provide Skyfii with adequate access to the Customer Resources; or
- 8.3.3 the occurrence of a Force Majeure event.
- 8.4 In respect of any and all Customer Resources supplied under this Agreement, Customer:
- 8.4.1 warrants that it is entitled to provide the Customer Resources to Skyfii;
- 8.4.2 warrants that the use of the Customer Resources by Skyfii to provide the Data Science Consultancy Services will not breach any Law; and
- 8.4.3 indemnifies Skyfii against any claim, loss, costs or liability suffered by Skyfii arising from Skyfii's use of the Customer Resources in accordance with this Agreement, including any inaccuracy, incompleteness or error in the Customer Resources.
- 8.5 Customer must not attempt to 'reverse engineer' any deliverables provided by Skyfii or otherwise try to ascertain Skyfii's Intellectual Property Rights and/or methodology for providing the Data Science Consultancy Services or preparing any of the deliverables. This prohibition applies even where the parties may agree that such deliverables constitute Commissioned Materials under clause 13.
- 8.6 Customer must not use any of the deliverables, or its knowledge of the Data Science Consultancy Services or deliverables gained in connection with this Agreement, to create (or engage or assist a third party to create) products or services that compete, whether in whole or in part, with Skyfii's products and services (including the deliverables).
- 9 **Additional Services [If Applicable].**
- 9.1 From time to time during the term of this Agreement, Customer may request the supply of Additional Services. Any such request must be in writing.
- 9.2 On receipt of a request for Additional Services, Skyfii may provide a reasonable estimate of its fees to supply the Additional Services ("Additional Services Quote"), and include with the Additional Services Quote any additional terms and conditions that will apply in respect of those Additional Services (which terms will take precedence over the terms of this Agreement with respect to those Additional Services).
- 9.3 Customer may accept an Additional Services Quote by signing it and returning it to Skyfii, in which case Skyfii will supply the Additional Services in accordance with the Additional Services Quote, and otherwise in accordance with this Agreement.
- 9.4 Notwithstanding any estimate of fees in an Additional Services Quote, Customer acknowledges that unless otherwise stated all Additional Services will be charged at the 'Time and Materials Rate' notified by Skyfii, and the fees payable for Additional Services will not be capped or limited in any way by an Additional Services Quote. Skyfii will advise Customer if the cost of Additional Services is likely to exceed the Additional Services Quote.
- 9.5 Notwithstanding the remaining terms and conditions of this Agreement Xpertek Contact may offer the Customer the Xpertek Digital Broadsheet Services. The order, implementation, maintenance and support of the Xpertek Digital Broadsheet Service shall solely be undertaken by Xpertek Contact, or its nominated representative and on the basis of this clause 9, and the remaining terms and conditions of this Agreement. Furthermore, any and all Intellectual Property Right in the Xpertek Digital Broadsheet Service are the exclusive property of Xpertek Contact or its licensors. Unless expressly stated in a Special Condition or the Proposal, nothing in this Agreement assigns or vests any rights to the Xpertek Digital Broadsheet Service in the Customer or any third party. Subject to clause 13.5, any Intellectual Property Rights created during the course of supplying the Xpertek Digital Broadsheet Service (including any adaptation or modification of existing material) will constitute Xpertek Contact proprietary and confidential information owned by (and, if necessary, assigned to) Xpertek Contact on and from creation. In the event that there is a conflict between the remaining terms and conditions of this Agreement and this clause 9.5, then the provisions of this clause 9.5 shall take precedence, only to the extent of such conflict.
- 10 **Customer Assistance**
- 10.1 If Skyfii reasonably requests assistance, information or material from Customer or any third party contractor of Customer in order for Skyfii to properly supply the Services, Customer must provide, or must arrange for

its third party contractor to provide, such assistance, information or material to Skyfii within:

- 10.1.1 such period as Skyfii reasonably specifies; or
- 10.1.2 otherwise, within a reasonable time or receiving such request.
- 10.2 If Customer or its third party contractor fails to provide any assistance, information or material reasonably requested by Skyfii in accordance with clause 10.1, or unreasonably delays the supply of such assistance, information or material, Customer acknowledges:
  - 10.2.1 Skyfii will have no liability to Customer to the extent Skyfii is unable to supply any Services due to such failure or delay; and
  - 10.2.2 Customer must, in addition to the fees payable for Services under this Agreement, the Special Conditions or the Proposal, pay all reasonable costs and expenses incurred by Skyfii as a result of such failure.

## 11 **Charges and Payment**

- 11.1 In consideration of the provision of the Services, Customer must pay the Services Fees to Skyfii along with all Taxes.
- 11.2 Skyfii will issue an invoice for the Services Fees (minus any Service Credits validly claimed by Customer) on a monthly basis, unless otherwise stated in a Special Condition or the Proposal. Customer must pay each invoice within 14 days of issue.
- 11.3 In addition to the Services Fee, Customer will reimburse Skyfii for Skyfii's reasonable expenses, provided such expenses arise directly from the supply of the Services, or are otherwise agreed to by Customer and are itemised on the invoice on which they are charged. Without limitation, reasonable expenses include travel costs, time spent travelling, communications costs and the cost of materials used in the supply of Services.
- 11.4 Without prejudicing its suspension and termination rights under clause 18, Skyfii may charge the Customer interest on any amount validly invoiced in accordance with clauses 11.2 and 11.3 which Customer fails to pay by the due date at the Prime Rate of interest as charged by Xpertek Contact's

commercial bankers, the identity and authority of which shall not be necessary to prove.

- 11.5 If Customer disputes in good faith any invoice issued by Skyfii, Customer must promptly pay the undisputed amount and will notify Skyfii immediately of the nature of its dispute. The Parties will work to resolve that dispute in good faith.

## 12 **Confidentiality.**

- 12.1 Each Party:
  - 12.1.1 may use Confidential Information of the other Party solely for the purposes of exercising its rights and performing its obligations under this Agreement; and
  - 12.1.2 subject to clause 12.2, must keep confidential and not disclose any Confidential Information of the other Party.
- 12.2 A Party will not be in breach of clause 11.1 where:
  - 12.2.1 that Party is authorised or required to do so by law;
  - 12.2.2 that Party receives the Confidential Information from a third party that is not under an obligation of confidence; or
  - 12.2.3 the relevant Confidential Information is already in the public domain.
- 12.3 Both Parties must promptly notify the other in writing if they know or suspect there has been any unauthorised to, or use or disclosure of, the other Party's Confidential Information.
- 12.4 Within 14 days of the termination of this Agreement, each Party must return or destroy (at the other Party's election) the Confidential Information of the other Party.
- 12.5 Each Party acknowledges that the other Party may suffer financial and other loss or damage in relation to a breach of this clause, for which monetary damages would be an insufficient remedy.
- 12.6 The Parties:
  - 12.6.1 shall consult with each other before issuing any press release or otherwise making any public statements with respect to this Agreement;
  - 12.6.2 shall not issue any such announcement without the other Party's prior written consent, which will not be unreasonably withheld or delayed, and



- 12.6.3 may, without the prior consent of the other Party, issue any press release or make any public statement required by law, court order, or any stock exchange on which any of the securities of that party or any of its Affiliates are listed. The Parties shall reasonably allow the other Party to review and comment on any draft announcement and shall give due consideration to all reasonable suggested changes.
- 13 **Intellectual Property Rights.**
- 13.1 All Intellectual Property Right in the Skyfii Material are the exclusive property of Skyfii or its licensors. Unless expressly stated in a Special Condition or the Proposal, nothing in this Agreement assigns or vests any rights to the Skyfii Material in the Customer or any third party.
- 13.2 Subject to clause 13.5, any Intellectual Property Rights created during the course of supplying the Services (including any adaptation or modification of existing material) will constitute Skyfii Material owned by (and, if necessary, assigned to) Skyfii on and from creation.
- 13.3 Skyfii hereby grants to Customer a non-exclusive, royalty-free licence to use the Skyfii Material during the Skyfii IO Access Term solely for the purpose of, and to the extent required to, receive and enjoy the benefit of the Services. For the avoidance of doubt, Customer may not adapt, modify, reproduce or sub-licence the Skyfii Material to any person without the express written approval of Skyfii.
- 13.4 Customer hereby grants to Skyfii a non-exclusive, royalty-free worldwide licence to use, reproduce, modify and adapt any Customer Material during the term of this Agreement solely for the purpose of, and to the extent necessary for, the supply of the Services.
- 13.5 Skyfii assigns to Customer any and all Intellectual Property Rights that may subsist in any Commissioned Material on creation.
- 13.6 Unless expressly stated in a Special Condition or the Proposal, Customer acknowledges and agrees that any Intellectual Property Rights in Third Party Products supplied by Skyfii are licensed to Customer by that third party and not Skyfii. Skyfii will have no liability to Customer or any third party in respect of such Third Party Products.
- 13.7 Subject to clause 13.8, Skyfii will indemnify Customer against liability under any final judgement or settlement in proceedings brought by a third party against Customer which determine that Customer's use of the Skyfii Materials or Commissioned Materials constitutes an infringement in Australia of any of the third party's Intellectual Property Rights.
- 13.8 Skyfii will not be required to indemnify Customer as provided in clause 13.7:
- 13.8.1 unless:
- 13.8.1.1 Customer promptly notifies Skyfii in writing on suspecting or becoming aware of any infringement, or claim alleging infringement;
- 13.8.1.2 Customer gives Skyfii complete control of the conduct of the defence of such a claim, including negotiations for settlement or compromise prior to the commencement of legal proceedings;
- 13.8.1.3 Customer provides Skyfii with all reasonable assistance in conducting the defence of such a claim;
- 13.8.1.4 Customer permits Skyfii to modify, alter or substitute the infringing part of the Skyfii Materials or Commissioned Materials at its own expense in order to avoid continuing infringement; and
- 13.8.1.5 Customer permits Skyfii to procure for Customer the authority to continue the use and possession of the infringing Skyfii Materials or Commissioned Materials; or
- 13.8.2 to the extent that the infringement, suspected infringement or alleged infringement arises from:
- 13.8.2.1 use of software or any other goods or services provided by any third party;
- 13.8.2.2 without limiting paragraph 13.8.2.1, use of the Skyfii Materials or Commissioned Materials in combination by any means and in any form with other goods or services not specifically approved by Skyfii;
- 13.8.2.3 use of the Skyfii Materials or Commissioned Materials in a manner or for a purpose not reasonably contemplated or not authorised by Skyfii;
- 13.8.2.4 modification or alteration of the Skyfii Materials or Commissioned Materials without the prior written consent of Skyfii;

- 13.8.2.5 any transaction entered into by Customer relating to the Skyfii Materials without Skyfii's prior consent in writing; or
- 13.8.2.6 an act or omission of Customer (including any of its representatives) or any third party (other than one acting under the direction of Skyfii).
- 13.9 Customer will indemnify Skyfii against any losses, costs, expenses, demands or liability, whether direct or indirect, arising out of a claim by a third party against Skyfii alleging infringement of any of that third party's Intellectual Property Rights if and to the extent the claim relates in any way to Customer Material or the claim arises from an event specified in clause 13.8.2.
- 14 Privacy, Data and Terms of Use.**
- 14.1 Skyfii will collect, hold, use and disclose End User Personal Information in accordance with the Skyfii Privacy Policy, the Skyfii Terms of Use and all applicable laws.
- 14.2 Skyfii will collect, hold, use, disclose and generate Usage Data in connection with the operation of its business and the provision of the Services. In doing so, Skyfii will comply with all applicable laws.
- 14.3 Customer must ensure that it effects and maintains an appropriate privacy policy and terms of use in respect of any End User Personal Information which the Customer receives as part of the Services or otherwise in connection with this Agreement. Such documents must offer at least the level of protection to End Users as conferred by the Skyfii Privacy Policy and the Skyfii Terms of Use.
- 15 Usage Data.**
- 15.1 Customer acknowledges that:
- 15.1.1 Skyfii will collect and generate Usage Data;
- 15.1.2 the owner or operator of a Recognised Device does not need to be an End User in order for Usage Data to be generated about such Recognised Device;
- 15.1.3 Usage Data may be compiled by Skyfii from both End Users and Recognised Devices; and
- 15.1.4 in the case of Usage Data about Recognised Devices, Usage Data may be collected about Recognised Devices without the knowledge or explicit consent of the owner or operator of that device; and
- 15.1.5 Skyfii may use Usage Data for any purpose permitted by law, the Skyfii Privacy Policy and the Skyfii Terms of Use.
- 15.2 Customer acknowledges that Skyfii may be obliged by law to disclose some or all Usage Data to government or regulatory authorities. If it is legally entitled to do so, Skyfii will advise Customer prior to, and consult with and otherwise use reasonable endeavours to minimise any, such mandatory disclosure.
- 15.3 Other than to the extent required by law, Skyfii will not identify Customer as the source or recipient of any Usage Data without the prior written consent of Customer.
- 16 Warranties and Indemnities.**
- 16.1 Customer warrants that it must not use, or knowingly allow another person (including any End User) to use, any part of the Services:
- 16.1.1 in a manner that is contrary to any law or is defamatory, discriminatory or offensive; or
- 16.1.2 in a manner that breaches the Skyfii Terms of Use or Skyfii Privacy Policy.
- 16.2 Each Party warrants that it will comply with all applicable laws, regulations and legal obligations.
- 16.3 Except as expressly provided in the Agreement, Skyfii excludes from this Agreement all conditions, warranties and terms implied by statute, general law or custom.
- 16.4 Subject to clause 16.3, Customer warrants that it has not relied on any representation made by Skyfii which has not been stated expressly in the Agreement, or upon any descriptions, illustrations or specifications contained in any document including any proposal, catalogues or publicity material provided by Skyfii.
- 16.5 Subject to clause 18, each Party ("Indemnifying Party") indemnifies the other Party and its related entities, directors, officers, employees and agents from and against all losses, damages, liabilities, claims and expenses incurred (including but not limited to reasonable legal costs) arising as a result of:
- 16.5.1 any negligent or malicious act or omission of the Indemnifying Party or any of its employees,

- consultants, contractors, agents or representatives relating to this Agreement; and
- 16.5.2 any claim by any third party (including any End User, customer or associate of the Indemnifying Party) in connection with the supply of Services supplied to the Indemnifying Party, including that any Services were disrupted or unavailable.
- 17 Liability.**
- 17.1 Except for liability under clause 17.2 but subject to the provisions of clause 17.3, Skyfii's total liability to Customer in contract, tort (including negligence), statute, or otherwise, is limited to:
- 17.1.1 where the liability arises from any failure by Skyfii to supply a particular Service in accordance with this Agreement (including the Proposal), an amount equal to the total Services Fees actually paid by Customer to Skyfii under for those Services in the 12 month period immediately before the liability arose; or
- 17.1.2 in any other case, an amount equal to the total Services Fees actually paid by Customer to Skyfii under this Agreement during the 12 month period immediately before the liability arose.
- 17.2 To the maximum extent permitted by law, Skyfii's total liability to Customer for any breach of a Non-excludable Condition is limited, at Skyfii's option, to any one of resupplying, replacing or repairing, or paying the cost of resupplying, replacing or repairing the goods in respect of which the breach occurred, or supplying again or paying the cost of supplying again, the Services in respect of which the breach occurred.
- 17.3 To the maximum extent permitted by law, Skyfii excludes all liability to Customer for any losses not arising naturally (in the ordinary course of things) from the relevant breach, or lost profits, lost revenue, lost savings, lost business, loss of opportunity, lost data or any consequential or indirect loss (however called) arising out of, or in connection with, any Services or this Agreement, and any claims by any third person (including any End User), or this Agreement, even if Skyfii knew that loss was possible or the loss was otherwise foreseeable.
- 18 Suspension and Termination.**
- 18.1 This Agreement commences on the Commencement Date and continues in force for the Skyfii IO Access Term, unless extended or terminated earlier in accordance with these terms and conditions.
- 18.2 Unless either Party provides written notice to the other Party no less than [90 days] prior to the end of the initial Skyfii IO Access Term or the then current Extended Term, this Agreement will automatically renew for a further period of [one year] (each, an 'Extended Term'). There is no limit on the number of Extended Terms that this Agreement may be extended for.
- 18.3 Either Party may terminate this Agreement (including any or all Services) immediately by notice in writing if:
- 18.3.1 the other Party is in material breach of this Agreement and, where such breach is capable of remedy, the other Party has not remedied that breach within 30 days of a written notice requiring it to do so;
- 18.3.2 the other Party is in material breach of this Agreement and that breach is not capable of remedy;
- 18.3.3 the other Party becomes, threatens or resolves to become or is in jeopardy of becoming, subject to any form of insolvency administration; or
- 18.3.4 the other Party ceases or threatens to cease conducting its business in the normal manner.
- 18.4 If Customer terminates this Agreement under clause 18.3, Skyfii must repay to the Customer any Services Fees that have been paid in advance for the supply of Services that have not been provided.
- 18.5 If Skyfii terminates this Agreement under clause 18.3, without prejudice to any other remedy Skyfii may have, Customer must pay an invoice for all outstanding Services Fees, including any Services Fees owing for Services already provided, along with any early termination charges set out in the Special Conditions or the Proposal.
- 18.6 Skyfii may terminate this Agreement or any Services, in whole or in part, by written notice to Customer if any supplier of Skyfii ceases to supply such services. Skyfii will refund any Services Fees that have been paid in advance for the supply of Services that have not been provided, as Customer's sole remedy.

18.7 Skyfii may also suspend or terminate this Agreement in whole or in part (including the supply of any or all Services to Customer) without liability or notice where:

18.7.1 Customer fails to pay any correctly issued invoice by its due date;

18.7.2 Customer is in breach or is likely to breach clause 5.5, 5.6, 11 or 13;

18.7.3 Customer has caused or is likely to cause End Users to be in breach of the Skyfii Privacy Policy or the Skyfii Terms of Use; or

18.7.4 Skyfii reasonably considers such suspension to be necessary to protect the security or integrity of the Services, or any software, hardware, data or network, or to comply with any law or direction of a regulator or relevant authority.

**19 Force Majeure**

19.1 Neither Party will be liable for any delay or failure to perform its obligations pursuant to this Agreement (other than a failure to pay an amount, due and owing) if such delay is due to the occurrence of a Force Majeure event.

19.2 If a delay or failure of a Party to perform its obligations is caused or anticipated due to the occurrence of a Force Majeure event, the performance of that Party's obligations will be suspended.

19.3 If a delay or failure by the Party to perform its obligations due to Force Majeure exceeds sixty (60) days, either Party may immediately terminate the Agreement by written notice to the other Party.

**20 Disputes.**

20.1 Any dispute arising in connection with this Agreement must be handled in accordance with this clause before a Party may commence any form of litigation or legal proceedings.

20.2 A Party must give notice in writing to the other Party of the matter in dispute, and nature of the dispute. Within 7 days of issuing such notice each Party must appoint a representative to negotiate on its behalf and those representatives must meet personally to consider and seek to resolve the dispute.

20.3 If the respective representatives are unable to resolve the dispute within 7 days of their first meeting, the Parties must refer the dispute to their respective chief

executive officers (or equivalent), who must meet personally within 7 days to discuss and seek to resolve the dispute.

20.4 If the respective chief executive officers are unable to resolve the dispute within 7 days of their first meeting, either Party will be free to commence such process, including alternative dispute resolution or litigation, as they see fit to resolve the dispute.

**21 General and Interpretation.**

21.1 This Agreement constitutes the entire agreement between the Parties and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing.

21.2 Except where otherwise explicitly permitted by a clause of this Agreement, the provisions of this Agreement will not be varied, except by agreement in writing signed by the Parties.

21.3 Customer may not assign or transfer part or all of this Agreement without the prior approval of Skyfii (which must not be unreasonably withheld).

21.4 Skyfii may assign or novate part or all of this Agreement to any party at any time, and Customer will promptly and without charge do all things reasonably requested to effect this.

21.5 A Party does not waive any right or relieve the other Party of any obligation under this Agreement unless explicitly stated by the waiving Party in writing.

21.6 If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, the Agreement will remain otherwise in full force apart from such provisions which will be deemed deleted.

21.7 This Agreement will be governed by and construed according to the law of the State of New South Wales, and each Party submits unconditionally to the non-exclusive jurisdiction of the courts of that State.

21.8 Any notice required under this Agreement (including under the Special Conditions or the Proposal) to be supplied in writing must be delivered to the contract manager of the other Party.

21.9 Skyfii will, during the term of this Agreement and for a commercially prudent period following termination, maintain such policies of insurance as Skyfii considers

- commercially appropriate and adequate in light of the nature of the Services.
- 21.10 Skyfii may at its discretion engage employees, agents and contractors and third party suppliers to provide part or all of the Services to Customer on Skyfii's behalf.
- 21.11 Customer acknowledges that it is responsible for ensuring the health, safety and welfare of Skyfii's officers, employees, agents and contractors, who are providing Services in accordance with this Agreement at the Customer's premises.
- 21.12 In this Agreement, unless the contrary intention appears:
- 21.12.1 clause headings are for ease of reference only and will not be relevant to interpretation;
- 21.12.2 words in the singular number include the plural and vice versa;
- 21.12.3 words importing a gender include any other gender;
- 21.12.4 a reference to a person includes bodies corporate and unincorporated associations and partnerships;
- 21.12.5 a reference to a clause in these terms and conditions is a reference to a clause of these terms and conditions;
- 21.12.6 a reference to a Special Condition is a reference to a Special Condition to this Agreement;
- 21.12.7 a reference to a clause in the Proposal is a reference to a clause of the Proposal between the Parties;
- 21.12.8 where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings; and
- 21.12.9 monetary references are references to Australian currency, unless otherwise stated.

***DRAFT NOT FOR SIGNATURE***