

Terms and Conditions

New Zealand

Last updated 01.02.24

1. Definitions

- 1.1. Account means a unique account created for the Subscriber to access the Subscription Services.
- 1.2. Add-on Services means additional services that may be added to the Subscription Services from time to time by agreement between the parties.
- 1.3. Agreement means these terms of use together with any terms contained in the Offer Details (if applicable).
- 1.4. Confidential Information means all confidential and proprietary information of a party ("Disclosing Party") disclosed to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including the terms and conditions of this Agreement (including pricing and other terms reflected in any Offer Details), the Subscriber Data, the Online Service, business and marketing plans, technology and technical information, product designs, and business processes. Confidential Information (except for the Subscriber Data) shall not include any information that:
 - 1.4.1. is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party;
 - 1.4.2. was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party;
 - 1.4.3. was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or
 - 1.4.4. is received from a third party without breach of any obligation owed to the Disclosing Party.
- 1.5. Force Majeure Event means events or circumstances beyond a party's reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labour problems, telecommunications or network failures or delays, service or computer failures involving services, hardware, or software not within Sea Flux's possession or reasonable control, and acts of vandalism (including network intrusions and denial of service attacks).
- 1.6. GST means goods and services tax as defined in the Goods and Services Tax Act 1985 in New Zealand and the Goods and Services Tax Act 1999 in Australia.
- 1.7. Intellectual Property Rights means unpatented inventions, patent applications, patents, design rights, moral rights, copyrights, trademarks, service marks, trade names, domain name rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world.
- 1.8. Malicious Code means viruses and other harmful or malicious code, files, scripts, agents or programs.
- 1.9. Offer Details means the pricing and related terms applicable to a subscription offer, as published on the Portal or otherwise provided by Sea Flux to the Subscriber.
- 1.10. Online Service means the online Web-based application to which a Subscriber has Subscribed under this Agreement and made available from the Portal.
- 1.11. Marketing Material means any "commercial electronic message" as that term is defined in the Unsolicited Electronic Messages Act 2007.
- 1.12. Portal means the Online Service website accessible via <https://www.seaflux.co.nz> or <https://www.seaflux.com.au>
- 1.13. Privacy Policy means the online Privacy Policy accessible via <https://www.seaflux.co.nz> or <https://www.seaflux.com.au>
- 1.14. Sea Flux means Sea Flux Limited and Sea flux Australia PTY Limited. A company registered in New Zealand (company number 7037265) and Australia (company number 655198057), and "we", "us", or "our" shall be a reference to Sea Flux.
- 1.15. Subscriber means a natural person or legal entity that has entered into this Agreement and related Subscription to access the Online Service and "you" or "your" is a reference to the Subscriber.
- 1.16. Subscriber Data means all electronic data or information submitted by the Subscriber and/or Users to or in connection with the Online Service or this Agreement.
- 1.17. Subscription means a subscription to the Online Service for a defined Term as specified on the Portal, and "Subscribe" shall be construed accordingly.
- 1.18. User means a natural person authorized by the terms of a Subscription to use the Online Service, and who has been supplied a user identification and password by the Subscriber or by Sea Flux and "Users" shall be construed accordingly.
- 1.19. Term means the duration of a Subscription as detailed in the Offer Details.

2. Service Provided by Sea-Flux

- 2.1. Services are provided to Subscribers and Users only. Subject to the terms of this Agreement, Sea Flux shall by way of a grant of a non-sublicensable, non-transferable and non-exclusive license, make the Online Service available to the Subscriber and its Users pursuant to this Agreement and related Subscription.
- 2.2. The Subscriber agrees that its purchase or renewal of a Subscription is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by Sea Flux with respect to future functionality or features.
- 2.3. Access to or use of the Online Service cannot be shared between more than one Subscriber or User but may be reassigned by Sea Flux to new Users replacing former Users who no longer require ongoing use of the Online Service.
- 2.4. A Subscription is effective from the date Sea Flux provides the Subscriber with confirmation of the subscription or the date on which the subscription is renewed (Effective Date).
- 2.5. By using our website or subscribing for the Online Service, you consent to receiving any Marketing Material from time to time. You may opt of receiving any such material by writing to us at any time. Please also see our Privacy Policy.
- 2.6. Any additional development work, database implementations, or training workshops outside the Standard Terms and Conditions and as provided for in this agreement will be invoiced separately at \$110 per hour. This includes a Licensee change request.

3. Sea-Flux Obligations

Sea Flux shall:

- 3.1. not use, modify, store, disclose or destroy relevant Subscriber Data otherwise than strictly in accordance Sea Flux's Privacy Policy the terms of which are hereby incorporated into this Agreement;
- 3.2. Use commercially reasonable efforts at its sole discretion (but shall bear no liability whatsoever) to maintain the security and integrity of the Online Service and the Subscriber Data; and
- 3.3. Provide a 99% uptime target during normal business hours, expressed as being 8am-5pm on working days as recognised in Auckland, New Zealand.
- 3.4. Sea Flux shall have no obligation to ensure compliance by you with any applicable laws or regulations.

4. Subscriber Obligations

- 4.1. The Subscriber is responsible for all activities that occur in User accounts and for Users' compliance with this Agreement.
- 4.2. The Subscriber shall:
 - 4.2.1. have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all the Subscriber Data;
 - 4.2.2. use commercially reasonable efforts to prevent unauthorized access to, or use of, the Online Service, and notify Sea Flux promptly of any such unauthorized access or use; and
 - 4.2.3. use the Online Service solely for its internal business and/or compliance purposes
 - 4.2.4. comply with all applicable local and foreign laws in using the Online Service
- 4.3. and shall not:
 - 4.3.1. license, sub-license, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Online Service available to any third party, other than to Users or as otherwise contemplated by this Agreement;
 - 4.3.2. store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material that violates any third-party privacy rights;
 - 4.3.3. send or store Malicious Code;
 - 4.3.4. interfere with or disrupt the integrity or performance of the Online Service or the data contained therein;
 - 4.3.5. attempt to gain unauthorized access to the Online Service or its related systems or networks
 - 4.3.6. issue any public or press releases relating to this Agreement without the consent of Sea-Flux

5. Payments

- 5.1. By purchasing a Subscription, you agree to the terms contained in the Offer Details for the relevant Subscription, and to pay all fees and taxes (if any) specified in the Offer Details, including without limitation any administration or late payment fees.
- 5.2. Fees for companies within New Zealand are quoted and payable in NZD. Fees for companies within Australia are quoted and payable in AUD dollars.
- 5.3. Fees are based on the Online Service purchased and not actual usage and fees paid are non-refundable.
- 5.4. Subscription invoices shall either be for monthly or annual amounts, unless agreed otherwise. Subscription invoices are issued by Sea-Flux Limited at the beginning of the calendar month with a due date of the 20th of each month.
- 5.5. Invoices issued for services such as database implementations will be issued on completion of the implementation and are due for payment on issue.
- 5.6. Subscriptions purchased in the middle of a monthly period will be charged for that monthly period in full and going forward based on the number of monthly periods remaining in the Term.
- 5.7. The Subscriber is responsible for maintaining complete and accurate billing and contact information.
- 5.8. Any payment not received from the Subscriber by the due date shall accrue default interest charges at the rate of 2% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.
- 5.9. The Fees do not include any direct or indirect national or foreign taxes, levies, duties or similar governmental assessments of any nature.
- 5.10. Where Sea-Flux is required to do so, it shall add GST or any other applicable tax or levy to the Fees.
- 5.11. Where there are any Add-on Services which have not been priced in the Offer Details or otherwise already agreed in writing, Sea-Flux reserves the right to charge for those Add-On Services in addition to the fees or pricing quoted in the Offer Details at the rate charged by Sea-Flux from time to time.
- 5.12. In the event that, notwithstanding demand, the Subscriber has failed to pay any amounts due, Sea-Flux has in its sole discretion, the right to terminate access to the Portal, and to retain the Subscriber's Information until any amounts due are paid.
- 5.13. Where a Subscriber has authorised payments of Fees to be made by automatic payment by credit or debit card, by way of monthly installments or otherwise, Sea-Flux has the right to continue to deduct all amounts reasonably due and payable.

6. Intellectual Property and Subscriber Data

- 6.1. Sea-Flux reserves all rights, title and interest in and to the Online Service, including all related Intellectual Property Rights. No rights are granted to the Subscriber hereunder other than as expressly set forth herein.
- 6.2. The Subscriber shall not:
 - 6.2.1. modify, copy or create derivative works based on the Online Service
 - 6.2.2. copy or mirror any content forming part of the Online Service, other than on the Subscriber's own intranets or otherwise for its own internal business purposes;
 - 6.2.3. reverse engineer the Online Service; or
 - 6.2.4. access the Online Service in order to build a competitive product or service (online or otherwise), or copy any ideas, features, functions or graphics of the Online Service or Sea-Flux.
- 6.3. As between Sea Flux and the Subscriber, the Subscriber exclusively owns all rights, title and interest in and to all the Subscriber Data.
- 6.4. The Subscribers grants Sea Flux an irrevocable, royalty-free, sub-licensable, transferable and perpetual license to use the Subscriber Data for any purpose including without limitation to incorporate the Subscriber Data into the Online Service subject to Sea-Flux's Privacy Policy.
- 6.5. Sea-Flux may provide:
 - 6.5.1. Templates and pre-developed forms to improve to data entry. Sea- Flux is not responsible for the accuracy or completeness of the input and content of the data including text, photos.
- 6.6. Sea-Flux as the creator and distributor of these templates and forms are not responsible for any errors, omissions, or inaccuracies in the template, nor for any actions taken or not taken based on the use of this template. Users are strongly encouraged to consult with qualified safety professionals, legal advisors, and relevant authorities to tailor the SMS to their organization's unique circumstances and comply with the specific requirements of their industry and jurisdiction.
- 6.7. These template and forms serve as a starting point and may need to be customised to meet the specific needs and risks of your organization. It is crucial to conduct a thorough risk assessment and review the MTOP/SMS in collaboration with knowledgeable stakeholders to ensure its effectiveness.

7. Confidential Information

- 7.1. The Subscriber shall not disclose or use any Confidential Information of Sea-Flux for any purpose outside the scope of this Agreement, except with Sea-Flux's prior written permission.
- 7.2. You agree to protect the confidentiality of the Confidential Information of Sea-Flux using all reasonable skill and care.
- 7.3. Where Sea-Flux is compelled by law to disclose any Confidential Information of the Subscriber, such disclosure shall not be a breach of this or any other agreement.
- 7.4. If you disclose or use (or threatens to disclose or use) any Confidential Information of Sea-Flux in breach of confidentiality protections hereunder, Sea-Flux shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate.

8. Warranties, Exclusions and Indemnity

- 8.1. Each party represents and warrants that it has the legal power to enter into this Agreement.
- 8.2. Except as expressly provided herein, Sea-Flux makes no warranties of any kind, whether express, implied, statutory or otherwise, and specifically disclaims all implied warranties, including any warranties of merchantability or fitness for a particular purpose, to the maximum extent permitted by applicable law. Without limiting the foregoing, Sea-Flux does not warrant that the Online Services will meet Your requirements or that it will be suitable for any particular purpose.
- 8.3. Sea-Flux may provide links to other websites. Sea-Flux provides no warranty, endorsement, recommendation nor indication whatsoever regarding the content in these websites. These links are not monitored, and Sea Flux has no liability whatsoever in relation to these links or websites.
- 8.4. The Subscriber shall defend, indemnify and hold Sea-Flux harmless against any loss, damage or costs (including legal fees on a solicitor-client basis) incurred in connection with any claims made or brought against Sea-Flux by any party alleging that the Subscriber Data, or the Subscriber's use of the Online Service infringes the intellectual property rights of, or has otherwise harmed, any party.
- 8.5. You warrant and represent that you are acquiring the right to access and use Sea-Flux's website or the Online Services for the purposes of a business and that, to the maximum extent permitted by law, any statutory consumer guarantees or legislation intended to protect non-business consumers in any jurisdiction including but not limited to the Fair Trading Act 1986 and the Consumer Guarantees Act 1993, do not apply to the supply of any products or services by Sea-Flux.

9. Liability

- 9.1. Sea-Flux's aggregate liability arising out of or related to this Agreement, whether in contract, tort or under any other category of liability, shall not exceed the amounts actually paid by and due from the Subscriber hereunder in the two (2) calendar months preceding the incident giving rise to the liability.
- 9.2. In no event shall Sea-Flux have any liability for any lost profits or for any indirect, special, incidental, punitive, or consequential losses or damages however caused and, whether in contract, tort or under any other category of liability, whether or not the party making a claim has been made aware of the possibility of such damages or liability.
- 9.3. Without derogating from the foregoing, Sea-Flux shall have no liability for any failure to:
 - 9.3.1. Store or manage any Subscriber Data or Confidential Information;
 - 9.3.2. Notify the Subscriber of key dates in the management of any vessel or personnel;
 - 9.3.3. Provide access to the Subscriber Data or Confidential Information;
 - 9.3.4. Store statutory records for the Subscriber.

10. Term

- 10.1. This Agreement commences on the Effective Date and will remain in effect until the expiration or termination of your Subscription, whichever shall occur first.
- 10.2. Where a Term is not specified in the Offer Details, the Subscription shall be monthly until this Agreement is terminated (Monthly Subscription).
- 10.3. You may end a Monthly Subscription at any time by writing to Sea-Flux. If you end your Subscription in this way, you will be able to continue to use the Online Service until your prepaid period expires, after which time your Subscription will end.
- 10.4. Sea-Flux will not provide any refunds for any Subscriptions that are ended early for any reason.
- 10.5. You may choose to have a Subscription automatically renew or terminate upon expiration of the Term.
- 10.6. Sea-Flux may for any reason, cancel, remove or attenuate the services it provides for temporary periods or indefinitely without notice to you.
- 10.7. Termination shall not relieve the Subscriber of the obligation to pay any fees accrued or payable to Sea-Flux prior to the effective date of termination.

11. General

- 11.1. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.
- 11.2. There are no third-party beneficiaries to this Agreement and no third-party may claim under the Subscriber whether under section 12 of the Contract and Commercial Law Act 2017 or otherwise.
- 11.3. Any notices given under this Agreement will be deemed to have been properly given if delivered personally or sent by post, postage prepaid, or email transmission to the registered office of Sea-Flux or the Subscriber as the case may be. Such notices will be deemed to have been given:
 - 11.3.1. if by delivery, when delivered;
 - 11.3.2. if by email transmission, when dispatched; and
 - 11.3.3. if by post, on the day on which in the ordinary course of post it would be delivered.
- 11.4. Notices to Sea-Flux may be sent to safety@sea-flux.com
- 11.5. Notices to you will be sent to the address that you identified on your account as your contact for notices. Sea-Flux may send notices and other information to you by email or other electronic form, subject and in accordance with Sea-Flux's Privacy Policy.
- 11.6. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right.

- 11.7. If any provision of this Agreement is held by a court to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.
- 11.8. Notwithstanding anything to the contrary, either party may assign this Agreement in its entirety, with the prior written consent of the other party (such consent not to be unreasonably withheld), in connection with a merger, acquisition, corporate reorganisation, or sale of all or substantially all of its assets not involving a direct competitor of the other party. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.
- 11.9. This Agreement shall be governed by New Zealand law, and the parties submit to the exclusive jurisdiction of the courts of New Zealand.
- 11.10. This Agreement, including the Privacy Policy and Offer Details constitutes the entire agreement between the parties, and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. To the extent of any conflict or inconsistency between the provisions in the body of this Agreement and the Privacy Policy or Offer Details, the terms of such Privacy Policy or Offer Details shall prevail.

12. Third-Party Tools

- 12.1. We may provide you with access to optional third-party tools or services which we neither monitor nor control. These optional third-party tools are available to you at your option and used at your discretion.
- 12.2. You acknowledge and agree that we provide access to such tools "as is" and "as available" without any warranties, representations or endorsement. Sea-Flux shall have no liability whatsoever arising from or relating to your use of such third-party tools.
- 12.3. Any use by you of optional tools offered through the site is entirely at your own risk and discretion and you should ensure that you are familiar with and approve of the terms on which such tools are provided by the relevant third-party provider(s).
- 12.4. Sea-Flux may from time to time amend the services it provides, or release or offer new features or services. Such amended services, new features or services shall also be subject to the terms of this Agreement.
- 12.5. The Sea-Flux application has the ability to integrate with third party products and data to seamlessly display content from other applications provided by these third parties. In using these third party data feeds you understand that Sea-Flux is not responsible for the accuracy or otherwise of this data, and is not liable in any way for any continuing services provided by these third parties. Sea-Flux does not warrant any aspect of these third party applications or data feeds, and does not validate any of the data provided in this way. For more information on Windy's Terms and Conditions, please go to <https://account.windy.com/agreements/windy-terms-of-use>

13. Helpdesk, Incident and Problem Management

- 13.1. Helpdesk and incident support will be provided (within Sea-Flux's sole discretion) to Subscribers subject to the following conditions;
 - 13.1.1. All Subscription Fees are fully paid at the time of the request; and
 - 13.1.2. the person making the request has a valid Sea Flux Login; and
 - 13.1.3. The support request is solely related to the Service to be delivered and not related to ancillary hardware, software or systems such as computer networks used by the Subscriber.
- 13.2. Incident management
 - 13.2.1. Objective is to restore normal service operation as quickly as possible and to minimise any adverse impact on business operations.
- 13.3. Service and technical support hours
 - 13.3.1. Sea-Flux's business hours are as observed in Auckland, New Zealand and are from 8am to 5pm Monday to Friday.
- 13.4. Technical support
 - 13.4.1. Technical support is provided by severity as follows:
- 13.5. Response target Resolution target
 - Level 1 < 30 mins < 6 hours
 - Level 2 < 1 business hour < 2 business days
 - Level 3 < 3 business hours < 10 business days
 - Level 4 < 6 business hours < 10 business days
- 13.6. Response target Resolution target
 - Level 1 < 30 mins < 6 hours
 - Level 2 < 1 business hour < 2 business days
 - Level 3 < 3 business hours < 10 business days
 - Level 4 < 6 business hours < 10 business days
- 13.7. Severity definition
 - Level 1 = Site down (System is down affecting a large number of users)
 - Level 2 = Many users affected (A large number of users are affected)
 - Level 3 = Single device or functionally failure (A single device or loss of functionality for some users but there is work around)
 - Level 4 = Low priority (Minor issue that is not stopping staff from working)
- 13.8. Contact email and numbers
 - 13.8.1. All helpdesk and incident correspondence via email shall be sent to safety@sea-flux.com
 - 13.8.2. Contact phone numbers are - Primary +64223080209; Secondary +64279404383
- 13.9. Incident logging process
 - 13.9.1. To log an incident with the supplier the client must:
 - 13.9.2. Severity Level 1, 2 = Phone the contact number listed above and log a call

13.9.3. Severity Level 3, 4 = Log a support issue via the email address listed above

14.

Updated	Changes made	Changes made by
07.12.23	Full review and minor edits	Phil, Tai
01.02.24	Added 6.5,6.6, 6.7 to this contract to reflect the template and forms responsibility and liability.	Phil, Tai