

Our Terms & Conditions

Last updated 22/04/2021

These Terms and Conditions are made between the Customer and the Company named in the Service Order.

Please read these Terms and Conditions carefully before ordering any chargeable Services.

Services in the US are provided by Essensys Inc, a company incorporated in Delaware with its registered office address located at 450 7th Avenue, New York, NY 10123, USA.

Services in Canada are provided by Essensys (Canada) Inc, a company incorporated in British Columbia with its registered office address located at 2900 – 550 Burrard Street, Vancouver BC V6C 0A3, Canada.

Services in the UK are provided by Essensys (UK) Limited, a company incorporated in England and Wales with its registered office address located at Aldgate Tower 7th Floor 2 Leman Street, London, E1 8FA, United Kingdom.

Unless agreed otherwise in a Service Order, services in Europe are provided by Essensys (Europe) B.V, a company incorporated in the Netherlands with its registered office address located at Aldgate Tower 7th Floor 2 Leman Street, London, E1 8FA, United Kingdom.

By completing a Service Order for a chargeable subscription for the Services (and when ordering online, in addition by clicking on the accept buttons relating to these Terms and Conditions and [End User Policy](#)) the Customer agrees to be legally bound by the terms of the Terms and Conditions, each Service Order and the [End User Policy](#) as they may be modified and posted on www.essensys.tech from time to time. In the event of any inconsistency between the provisions of the Terms and Conditions, a Service Order or the [End User Policy](#), the terms of the Service Order(s) shall prevail followed by the [End User Policy](#) and then the Terms and Conditions.

If you don't wish to be bound by these Terms and Conditions, the Service Order and the [End User Policy](#) then you may not purchase any Services.

IT IS AGREED BETWEEN THE PARTIES THAT:

1. DEFINITIONS

Terms used in these Terms and Conditions are [defined here](#).

2. SERVICES AND SOLUTIONS

- **2.1** The Customer engages Company and Company agrees to provide the Solution, Services and Documentation to Customer on a non-exclusive basis in accordance with the terms of this MSA and pursuant to an agreed Service Order.
- **2.2** From the Effective Date, the Customer shall purchase Services from Company by completing Service Orders setting out the specific Services ordered and the Fees applicable to Services ordered. Each Service Order will be subject to terms of this MSA and shall be incorporated into the terms of this MSA upon execution by both parties.
- **2.3** Where the Company accepts a Service Order which includes an order for the Smart Access application, the terms and conditions at Schedule 2b shall apply .
- **2.3(a)** If there are any conflicts or inconsistencies between any of the terms of this MSA and the provisions of any Service Order the provisions of this MSA shall prevail.
- **2.3(b)** Where the Company accepts a Service Order which includes an order for STEP Services, the terms [defined here](#) shall also apply. If there is a conflict between those definitions and the terms and definitions stated in the MSA, those STEP Services definitions will prevail in respect of the STEP Services, including as the MSA may be amended from time to time.
- **2.4** If there is a conflict between the terms of this MSA and the terms of its Schedules, the terms of this MSA shall prevail other than in the event of a conflict between the terms of this MSA and the terms of Schedule 2b, in which event the terms of Schedule 2b shall prevail.
- **2.5** The customer shall:
 - **2.5.1** Allow all employees, agents and representatives of Company reasonable access to Premises as is necessary for provision of Services; and
 - **2.5.2** Provide access to all information, resources, facilities, accommodation, software, data, databases and/or materials which are necessary to enable the Company to supply the Services in accordance with the terms of this MSA.

3. LICENSE TO USE THE SOLUTION AND SERVICES

- **3.1** Subject to the Customer's payment of the Fees:

- **3.1.1** The Customer is granted a non-exclusive, non-transferable licence to permit Users to use Services included in each Service Order (including any associated IPR, Company Materials and Confidential Information of the Company) from the Effective Date for the Term for internal business operations. Such licence permits the Customer and Users to make temporary cache copies of software or other information necessary for Customer and Users to receive Solution and Services via the Internet. No additional implied rights are granted beyond those specifically mentioned in this clause 3.1.1.
- **3.1.2** The Customer is granted a non-exclusive, non-transferable licence and may permit Occupiers to use Service included in each Service Order (including any associated IPRs, Company Materials and Confidential Information of the Company) from Effective Date for the Term for Customer's and Occupier's internal business operations. Such licence permits Customer and Occupiers to make temporary cache copies of software or other information necessary for Customer or Occupier to receive the Solution and Services via the Internet. No additional implied rights are granted beyond those specifically mentioned in this clause 3.1.2.
- **3.2** Notwithstanding any statutory rights, no right to modify, adapt, or translate Solution or Services or create derivative works from Solution or Services is granted to Customer, Users or Occupiers.
- **3.3** Nothing in the MSA shall be construed to mean, by inference or otherwise, that Customer, Users or Occupiers have any right to obtain source code for software comprised within Solution or Services. Disassembly, decompilation or reverse engineering and other source code derivation of software comprised within Solution or Services is prohibited. To the extent Customer, Users or Occupiers are granted the right by law to render Solution or Services interoperable with other software, Company will provide relevant Application Programming Interface provided Customer, User or Occupiers make a written request identifying relevant details of Solution or Services to which operability is sought and the nature of the information needed. The Company has the right to impose reasonable conditions including but not limited to the imposition of a reasonable fee for providing such access and information.
- **3.4** Unless otherwise specified in this MSA, the Solution and Services are provided and may only be used in conjunction with:
 - **3.4.1** The Customer's existing systems and applications in order to facilitate Customer's transactions with Occupiers;
 - **3.4.2** Providing access to Solutions and Services solely to Occupiers and Users; and
 - **3.4.3** Accessing and using Documentation as necessary to enable use of Solution and Services.

- **3.5** Except as permitted in this MSA, the Customer, Users and Occupiers may not:
 - **3.5.1** Lease, loan, resell, assign, licence, distribute or otherwise permit access to Solution and Services; or
 - **3.5.2** Use Solution or Services to provide ancillary services related to Solution or Service; or
 - **3.5.3** Permit access to or use of Solution or Services by or on behalf of any third party;
- **3.6** The Company reserves the right to electronically monitor use of Solution and Services.
- **3.7** The Customer is responsible for verifying that all individuals who are designated Users are authorized for the levels of access granted.

4. INTELLECTUAL PROPERTY RIGHTS

- **4.1** All IPR and title to Solution, Services and Documentation (save to the extent these incorporate any Customer Data, Customer IPR or third party owned item) shall remain with Company and/or its licensors and subcontractors. The name "essensys", all Company logos, and product names associated with Solution and Services, as they may change from time to time, including, but not limited to "Operate", "Connect", "essensysCloud", "STEP" and "Smart Access" are trademarks of Company or third parties. No interest or ownership in Solution, Services, Documentation, IPR or otherwise is transferred to Customer under this MSA.
- **4.2** The Customer shall retain sole ownership of all rights, title and interest in and to Customer Data and its pre-existing IPR and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of Customer Data.
- **4.3** The Customer is not allowed to remove any proprietary marks or copyright notices from Solution or Services.
- **4.4** The Customer grants Company a non-exclusive, non-transferable, revocable licence to display the Customer's name, logo and trademarks, as designated and/or amended by Customer from time to time and as required in the creation of correspondence, documentation and website front ends in the provision of Solution and Services.
- **4.5** The Customer assigns all rights, title and interest in any Feedback to Company. If for any reason such assignment is ineffective, Customer shall grant Company a non-exclusive, perpetual, irrevocable, royalty free, worldwide right and licence to use, reproduce, disclose, sub-licence, distribute, modify and exploit such Feedback without restriction.
- **4.6** The Company may take and maintain technical precautions to protect Solution and Services from improper or unauthorised use, distribution or copying.

5. TERM AND TERMINATION

- **5.1** The MSA commences on Effective Date. The MSA shall continue until all Service Orders are terminated or expire. Neither party may terminate MSA without cause prior to the expiry or termination of the Initial Term of each individual Service Order. Termination of any individual Service Order, in whole, or in part shall not effect the Term of the MSA which shall continue unaffected until all Service Orders are terminated or expire.
- **5.2** The Company may terminate the MSA or any Service Order, in whole, or in part or the provision of any Services with immediate effect if:
 - **5.2.1** The Customer, a User or an Occupier has used or permitted use of Solution and Services other than in accordance with the MSA; or
 - **5.2.2** The Company is prohibited under applicable law, or otherwise from providing Solution or Services.
- **5.3** Either party may terminate this MSA and all Service Orders immediately, with cause, if the other party:
 - **5.3.1** Ceases or threatens to cease or carry on business; or
 - **5.3.2** Is unable to pay its debts or enters into compulsory insolvency or voluntary liquidation; or
 - **5.3.3** Convenes a meeting of its creditors or has a receiver, manager or similar official appointed in respect of its assets; or
 - **5.3.4** Has an administrator, receiver, manager or similar official appointed; or
 - **5.3.5** Is affected by a similar event under the law of any other jurisdiction; or
 - **5.3.6** A Force Majeure event lasts for more than 28 days.
- **5.4** If Company persistently fails to supply the Solution and Services in accordance with terms of the MSA, before serving notice to terminate for material breach under clause 5.5, Customer must give Company written notification of breaches and request Company to remedy breaches. If Company fails to remedy breaches within 14 days of receipt of such notice, Customer must inform Company and give them a further 14 days in which to remedy breaches. If 14 days after service of the second notice Company still fails to remedy the breaches, Customer may terminate the applicable Service Order in accordance with clause 5.5 below.
- **5.5** Either party may terminate this MSA or any Service Order, in whole, or in part for material breach of any term by giving breaching party written notice. However, where breach is capable of remedy, neither party may serve notice to terminate until procedure set out in clause 5.4 above has been completed. Any termination notice served under clause 5.5 shall be effective 7 days after receipt of such notice.
- **5.6** Termination of the MSA or any Service Order for any reason shall not affect the accrued rights of the parties arising under the MSA and in particular without limitation the right to recover damages against the other. Clauses 3 (Licence to use the Solution and Services), 4 (Intellectual Property Rights), 5 (Term and Termination), 6 (Fees and Invoicing), 7 (Payment Terms),

8 (Confidential Information), 9 (Data Protection), 11 (Liability), 12 (Indemnities), 14 (Assignment), 15 (Relationship between the Parties), 17 (Miscellaneous), 18 (Non-Solicitation), 19 (Dispute Resolution) and 20 (Governing Law and Jurisdiction) shall survive the expiry or termination of the MSA and shall remain in force and effect.

- **5.7** Upon termination of the MSA or a Customer's account all Service Orders shall automatically terminate.
- **5.8** Termination or expiry of any individual Service Order(s) shall not effect the term of the MSA or any Service Orders which have not expired or terminated and the MSA and remaining Service Order(s) shall continue unaffected.
- **5.9** Unless terminated by the customer under clause 5.5, on termination of the MSA or a Customer's account, Customer shall remain liable to pay all Fees set out in all Service Order(s) for the remainder of the remaining current term of each Service Order, regardless of any early termination. All licences granted under the MSA shall terminate on the effective date of termination and Company shall:
 - **5.9.1** Cease providing the Solution and Services to Customer and immediately deactivate all Customer and Occupier's accounts;
 - **5.9.2** Within 30 days return all Customer Data stored in Company's database in its then current format, free of charge, if requested to do so by Customer. If Customer requires any Customer Data to be returned in a different format, Company reserves the right to charge for this additional service on a Time and Materials Basis; and
 - **5.9.3** Provided this MSA has not been terminated due to Customer's breach, Company will provide reasonable assistance and information to enable Customer Data to be transitioned to a new platform. Such assistance will be charged for on a Time and Materials basis; and
 - **5.9.4** Be entitled to delete all Customer Data from its live systems 30 days after the effective date of termination of the MSA, or an account.
- **5.10** Unless Customer or Company notifies the other party in writing at least 60 days prior to expiration of Initial Term or any additional Renewal Term set forth in any Service Order, all Essensys Operate Subscription Services shall be automatically renewed for an additional Renewal Term equal in length to the Initial Term, at the list price subscription Fees then in effect for the Essensys Operate subscription services being renewed.

6. FEES AND INVOICING

- **6.1** The Company shall charge the Customer the Fees set out in each Service Order.
- **6.2** All invoices shall be issued and are payable in the currency stated in each Service Order.

- **6.3** All Fees exclude any Value Added Tax or sales tax legally payable on invoice date, which shall be paid by Customer in addition, where applicable.
- **6.4** Previously approved travel fees, incidental costs and other expenses shall be invoiced in addition to the Fees in arrears, as and when they arise.
- **6.5** Training fees shall be calculated on a Time and Materials Basis. Previously approved travel fees shall be payable in addition.
- **6.6** Fees relating to any part of the Solution that relates to software remain fixed for Initial Term of the MSA. After the Initial Term, the Company may on each subsequent anniversary of the Effective Date, increase the Fees by 3% or a CPI Adjustment whichever is the greater.

7. PAYMENT TERMS

- **7.1** The Customer shall pay Company the Fees set out in each Service Order to the bank account specified on each invoice.
- **7.2** Payment of all Fees is due in full without set-off or deduction within 30 days of the date of properly rendered, undisputed invoices and shall be without prejudice to any claims or rights which Customer may have against Company. If Customer believes any invoice is incorrect, it must notify Company in writing within 30 days of invoice date.
- **7.3** Where payment of any Fee is not received within 15 days of the due payment date, Company may, without liability to Customer, suspend the Customer's password, account and access to all or part of the Solution and Services. Company shall be under no obligation to provide any or all of Solution or Services while invoice(s) concerned remain unpaid. Company shall be entitled to charge interest on overdue Fees at the applicable statutory rate.
- **7.4** The Company reserves the right to recover statutory interest on any late payment, costs and reasonable legal fees it incurs in recovering overdue payments.

8. CONFIDENTIAL INFORMATION

- **8.1** Each party may use the Confidential Information of the other only for the purposes set out in the MSA. Each party must keep confidential all Confidential Information disclosed to it, except where the recipient of Confidential Information is required to disclose the Confidential Information by law to any regulatory, governmental or other authority with relevant powers to which either party is subject.
- **8.2** Each party may disclose the Confidential Information of the other party to those of its employees and agents who need to know the Confidential Information for the purposes of the MSA, but only if the employee or agent is bound by confidentiality undertakings equivalent to those set out in the MSA.

- **8.3** Both parties agree to return (or destroy) all documents, materials or data containing Confidential Information to the disclosing party without delay upon completion of the Services or termination or expiry of the MSA.
- **8.4** The obligations of confidentiality under the MSA do not extend to information that:
 - **8.4.1** Was in the other party's lawful possession before negotiations leading to the MSA; or
 - **8.4.2** Is, or after the Effective Date, becomes publicly known other than through any act or omission of the receiving party; or
 - **8.4.3** Is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - **8.4.4** Is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - **8.4.5** Is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- **8.5** If either party is required to disclose any Confidential Information pursuant to clause 8.4.5 such party shall, where lawfully permitted to do so:
 - **8.5.1** Promptly consult with and take into account any comments from the other party prior to making any disclosure; and
 - **8.5.2** Work with the other party to ensure any exemptions or other legitimate means of preventing disclosure or limiting disclosure are used to the fullest extent possible.
- **8.6** The parties acknowledge and agree that without prejudice to the general confidentiality provisions in this clause 8 and without limitation, all information falling within the definition of Confidential Information as set out in the MSA and any information which is supplied by the disclosing party to the receiving party pursuant to the MSA or the negotiation thereof is:
 - **8.6.1** Confidential Information the disclosure of which by the receiving party would be an actionable breach of confidence; or
 - **8.6.2** A trade secret of the disclosing party; and
 - **8.6.3** Information, the disclosure of which would be likely to prejudice the commercial interests of the disclosing party or of any other person.

9. DATA PROTECTION

- **9.1** Each party undertakes to comply with its obligations under relevant applicable data protection laws, principles and the terms of the MSA.
- **9.2** To the extent that personal data is processed using the Solution and Services, the parties acknowledge that Company is a data processor and Customer is a data controller and the parties shall comply with their respective statutory data protection obligations.
- **9.3** The Customer shall ensure that:

- **9.3.1** The personal data, which it supplies or discloses to the Company has been obtained fairly and lawfully;
- **9.3.2** It will obtain all necessary consents from persons whose data is being processed; and
- **9.3.3** It has in place all necessary registrations with authorities to permit the Company to transfer personal data to third parties pursuant to its obligations under the MSA.
- **9.4** The Company confirms that it:
 - **9.4.1** Will only process personal data on behalf of, and in the name of, the Customer;
 - **9.4.2** Will only process data in accordance with the instructions of the Customer; and
 - **9.4.3** Has taken, as well as its subcontractors, licensors and hosts, sufficient and appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to personal data, having regard to the state of technological development and cost of implementing any measures, to ensure a level of security appropriate to the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the personal data to be protected.
- **9.5** If a third party alleges infringement of its data protection rights, the Company shall be entitled to take measures necessary to prevent the infringement of a third party's rights from continuing.
- **9.6** The Company's privacy policy that applies to the Solution and any use of the Solution by a User can be found here <https://eessensys.tech/privacy-policy/>

10. REPRESENTATIONS AND WARRANTIES

- **10.1** Each party warrants and represents that:
 - **10.1.1** It has full corporate power and authority to enter into the MSA and to perform the obligations required hereunder;
 - **10.1.2** The execution and performance of its obligations under the MSA does not violate or conflict with the terms of any other agreement to which it is a party and is in accordance with any applicable laws; and
 - **10.1.3** It shall respect all applicable laws and regulations, governmental orders and court orders, which relate to the MSA.
- **10.2** The Company warrants to Customer that it has the right to licence the Solution and Services.
- **10.3** The Company warrants and represents that the Services shall be performed with reasonable skill and care and in a professional manner in

accordance with good industry practice and that the Services will be provided in accordance with the SLA(s).

- **10.4** The Company warrants to the Customer that the Solution will operate to provide in all material respects the facilities and functions implemented by the Company as set out in the Functional Description. If there is a breach of this warranty, the Company shall use reasonable commercial endeavours, to correct any material defect or to replace the defective Solution. Notwithstanding the aforesaid, the Company shall only be obliged to remedy any material defect if:
 - **10.4.1** The Customer notifies Company in writing immediately upon discovering the defect; and
 - **10.4.2** Following Company's examination of the Solution, it is established that such a defect exists.
- **10.5** Warranties in clauses 10.2 to 10.4 inclusive shall not cover deficiencies or damages relating to:
 - **10.5.1** Any third party components not provided by the Company; or
 - **10.5.2** Any third party provided connectivity necessary for the provision or use of the Solution and Services; or
 - **10.5.3** Compliance with third party software or products, non-Company programmes or data used in combination with the Solution or Services except as specifically agreed and included in the MSA; or
 - **10.5.4** A failure of the Solution to conform with the Functional Description caused by the use or operation of the Solution by Customer, User or Occupier with an application or in an environment other than that set out in the MSA; or
 - **10.5.5** Modifications made to the Solution not carried out by Company.
- **10.6** No warranty is made regarding results Customer; Users or Occupiers can achieve from using Solution and Services or that Solution and Services will operate uninterrupted or error free.
- **10.7** The Customer warrants that it rightfully owns the necessary user rights, copyrights and ancillary copyrights and permits required for it to fulfil its obligations under the MSA.
- **10.8** The Customer warrants and represents that it, Occupiers and Users shall maintain reasonable security measures (as may change over time) covering, without limitation, confidentiality, authenticity and integrity to ensure that the access to Solution and Services granted under the MSA is limited as set out under the terms of MSA. In particular Customer, Occupiers and Users shall treat any identification, password or username or other security device for use of Solution and Services with due diligence and care and take all necessary steps to ensure they are kept confidential, secure and are used properly and are not disclosed to unauthorised persons. Any breach of the above shall be immediately notified to Company in writing. Customer shall be liable for any breach of this MSA by any User or Occupier.

- **10.9** Except as expressly stated in the MSA, all warranties and conditions, whether express or implied by statute, common law or otherwise (including but not limited to satisfactory quality and fitness for purpose) are excluded to the fullest extent permitted by law.
- **10.10** Each party acknowledges to the other that (save in relation to fraudulent statements or representations) in entering into this MSA it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this MSA or not) other than as expressly set out in this MSA.

11. LIABILITY

- **11.1** Neither party excludes or limits its liability to the other for fraud, death or personal injury caused by their negligent act or omission or wilful misconduct.
- **11.2** Neither party shall be liable for any Consequential Loss arising out of or related to the MSA or in tort (including negligence or breach of statutory duty), misrepresentation or otherwise arising, even if the party was advised of the possibility of such damages.
- **11.3** Neither party shall be liable for any loss of profits (whether categorised as direct or indirect) arising out of or related to the MSA, whether based on contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, even if a party was advised of the possibility of such damages.
- **11.4** Subject to clauses 11.1 to 11.3 inclusive the total liability of Company to Customer in aggregate (whether in contract, tort or otherwise) for any and all claims relating to or arising under the MSA or based upon any claim for indemnity or contribution shall be limited to the total Fees (excluding all taxes) paid by Customer to Company under the relevant Service Order during 12 month period prior to date on which any such claim arose. If duration of Service Order has been less than 12 months, such shorter period shall apply.
- **11.5** The Customer shall be liable for any breaches of the MSA caused by the acts, omissions or negligence of any Users or Occupiers who access Services or Solution as if such acts, omissions or negligence had been committed by Customer itself.
- **11.6** The Customer shall not raise any claim under the MSA more than 1 year after:
 - **11.6.1** The discovery of the circumstances giving rise to a claim; or
 - **11.6.2** The effective date of termination or expiry of the MSA.
- **11.7** The parties acknowledge and agree that in entering into the MSA, each had recourse to its own skill and judgement and have not relied on any representation made by the other, their employees or agents.

12. INDEMNITIES

- **12.1** The Company shall at its own expense, defend or at its own option settle any claim brought against Customer by a third party on the basis of an infringement of any IPRs by Solution or Services (excluding any claim deriving from any Customer provided item) and pay any final judgment entered against Customer on such issue or any settlement thereof, provided that:
 - **12.1.1** The Customer notifies Company promptly of each such claim;
 - **12.1.2** The Company is given sole control of the defence and/or settlement; and
 - **12.1.3** The Customer fully co-operates and provides all reasonable assistance to Company in the defence or settlement.
- **12.2** If all or part of Solution or Services becomes, or in the opinion of Company may become, the subject of a claim or suit of infringement, Company shall at its own expense and sole discretion:
 - **12.2.1** Procure for Customer the right to continue to use Solution or Service or affected part thereof;
 - **12.2.2** Replace Solution or Service or affected part with another suitable non-infringing service or software;
 - **12.2.3** Modify Solution or Services or affected part to make the same non-infringing.
- **12.3** The Company shall have no obligations under clauses 12.1 and 12.2 above to the extent that a claim is based on:
 - **12.3.1** A modification of Solution or Services by anyone other than Company;
 - **12.3.2** The combination, operation or use of Solution or Services with other services or software not provided by Company if such infringement would have been avoided in the absence of such combination, operation or use; or
 - **12.3.3** The use of Solution or Services in any manner inconsistent with terms of the MSA; or
 - **12.3.4** The negligence or wilful misconduct of Customer.
- **12.4** Clauses 12.1 to 12.3 state Customer's sole and exclusive rights and remedies and Company's entire obligations and liability for any claims made under these clauses.
- **12.5** The Customer shall defend, indemnify and hold Company and its employees, sub-contractors or agents harmless from and against any costs, losses, liabilities and expenses, including reasonable legal costs arising from any claim relating to or resulting directly or indirectly from:
 - **12.5.1** Any claimed infringement or violation by Customer, a User or an Occupier of any IPRs with respect to use of Solution or Services outside of scope of the terms of the MSA; or
 - **12.5.2** Use by Company of any Customer Data or Customer or Occupier provided item, in particular storage or publication on the Internet of any Illegal Content; or

- **12.5.3** Any access to or use of Solution or Services by a User, an Occupier or a third party;
- **12.5.4** Breaches of data protection law or regulations resulting from Company processing data on behalf of and in accordance with the instructions of Customer, a User or an Occupier; and
- **12.5.5** Any breach of the terms of the MSA by a User or an Occupier;
- **12.5.6** and Company shall be entitled to take reasonable measures in order to prevent Illegal Content from being published on the Internet or breaches of third party rights from continuing.
- **12.6** Subject to clauses 12.1 to 12.5 inclusive, each party (“the first party”) indemnifies and undertakes to keep indemnified the other party, its officers, servants and agents (“the second party”) against any costs or expenses (including the cost of any settlement) arising out of any claim, action, proceedings or demand that may be brought, made or prosecuted against the second party by any person arising out of or as a consequence of an unlawful or negligent act or omission of the first party, its officers, servants or agents in any way connected with the MSA whether arising from and failure by the first party to comply with the terms of the MSA or otherwise. This indemnity extends to and includes all costs, damages and expenses (including legal fees and expenses) reasonably incurred by the second party in defending any such action, proceeding claim or demands.

13. SECURITY

- **13.1** The Company permits Customer to specify which Users or Occupiers may access Services and Solution through its standard application security options.
- **13.2** The Customer, Users and Occupiers must ensure each password is only used by the user to which it has been assigned. Customer is responsible for any and all activities that occur under Customer’s account and via Customer’s passwords. Customer will immediately notify Company if Customer becomes aware of any unauthorised use of Customer’s account, Customer’s passwords or breach of security known to Customer. Company shall have no liability for any loss or damage arising from Customer’s failure to comply with these requirements.
- **13.3** The Company may suspend access to Solution and Services, or portion thereof, at any time, if in Company’s sole reasonable discretion, the integrity or security of Services or Solution is in danger of being compromised by acts of Customer, Users or Occupiers. Company shall give Customer 24 hours prior written notice, before suspending access to the Services or Solution, giving specific details of its reasons.

14. ASSIGNMENT

- **14.1** No party may assign, transfer or subcontract its rights under the MSA without the prior written consent of the other party, such consent shall not be unreasonably withheld, however Company shall be entitled to assign the MSA to:
 - **14.1.1** Any company in the Company's group of companies; or
 - **14.1.2** Any entity that purchases the shares or assets of Company as the result of a merger, takeover or similar event.

15. RELATIONSHIP BETWEEN THE PARTIES

- **15.1** The Company and Customer are independent contractors and nothing in the MSA will be construed as creating an employer-employee relationship.

16. CONTACTS

- **16.1** The Customer shall provide a designated application support contact who will be responsible for and have sufficient information to respond to support questions to users and Occupiers.
- **16.2** The Customer shall provide a designated billing contact with all relevant contact information to respond to billing and payment questions regarding Services.

17. MISCELLANEOUS

- **17.1** Should a provision of the MSA be invalid or become invalid then the legal effect of the other provisions shall be unaffected. A valid provision is deemed to have been agreed which comes closest to what the parties intended commercially and shall replace the invalid provision. The same shall apply to any omissions.
- **17.2** Except with respect to the Customer's obligation to pay the Fees, if a party is wholly or partially unable to comply with its obligations under the MSA due to Force Majeure, then that party's obligation to perform in accordance with the terms of the MSA will be suspended for the duration of the Force Majeure. As soon as practicable after an event of Force Majeure arises, the party affected by Force Majeure must notify the other party of the extent to which the notifying party is unable to perform its obligations under the MSA.
- **17.3** This MSA constitutes the whole agreement and understanding between the parties and supersedes all prior agreement, representations, negotiations and discussions between the parties relating to the subject matter thereof.

- **17.4** Amendments to, or notices to be sent under the MSA, shall be in writing and shall be deemed to have been duly given if sent by registered post or email to a party at the address given for that party in the Service Order. Notwithstanding the aforesaid, the Company may change or modify the terms of the MSA upon giving Customer 30 days notice via email. All changes shall be deemed to have been accepted by Customer unless Customer responds via email within 30 days of the aforesaid notice.
- **17.5** Neither party shall make any public statement, press release or other announcement relating to the terms or existence of the MSA, or the business relationship of the parties, without the prior written consent of the other party. Notwithstanding the aforesaid Company requests use of Customer's name and trade marks (logo only) to list Customer as a client of Company on its website and in other marketing materials and information. Permission for such use is assumed unless otherwise notified to Company by Customer.
- **17.6** Nothing contained in this Agreement is intended to be enforceable by any third party pursuant to any rights that a Party may have under applicable law, in particular the Contracts (Rights of Third Parties) Act 1999.

18. NON-SOLICITATION

- **18.1** During the term of this MSA and for a period of 1 year after its expiry or termination, neither party shall solicit for employment, employ or engage the services of any person who performed services on behalf of the other party in connection with, or was otherwise involved in the performance of the Service provided under this MSA, without prior written consent of the other party.
- **18.2** This provision shall not restrict general advertisements of employment or the rights of any employee of one party, on that employee's own initiative, or in response to general advertisements, to seek employment from the other party and under such circumstances, for the other party to hire such employee.

19. DISPUTE RESOLUTION

- **19.1** The parties will use their respective reasonable efforts to negotiate in good faith and settle any dispute that may arise out of or in relation to the MSA and any breach of it.
- **19.2** If any such dispute cannot be settled amicably through ordinary negotiations of the employees of each party, the dispute shall be escalated in writing to the Chief Operating Officer of Company and the Chief Financial Officer of Customer who shall in good faith try and resolve dispute. If the dispute or difference is not resolved within 14 days of dispute being escalated the parties shall then be entitled to pursue their claim in accordance with clause 20 below.

20. GOVERNING LAW AND JURISDICTION

- 20.1 Each party agrees to:
 - **20.1.1** These Terms being subject to the applicable law set out in clause 20.2 below, without regard to choice of law or conflict of law rules; and
 - **20.1.2** The exclusive jurisdiction of the applicable courts set out in clause 20.2 below to determine any disputes arising under the MSA.
- **20.2** If Customer named in a Service Order is registered in:
 - **20.2.1** the USA the law of the state of New York, USA and the courts of the state of New York, USA shall have exclusive jurisdiction;
 - **20.2.2** any country outside of the USA the governing law shall be the law of England and Wales and the courts of England shall have exclusive jurisdiction;
 - **20.2.1** the USA:
 - **20.2.1.i** this MSA any MSA and any dispute or claim (whether contractual or non-contractual) arising out of or in connection with it, its subject matter or formation shall be governed by and construed in accordance with the law of the state of New York, USA; and
 - **20.2.1.ii** the courts of the state of New York, USA shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) arising out of or in connection with this MSA, its subject matter or formation; or
- **20.2.2** any country outside of the USA:
 - **20.2.2.i** this MSA and any dispute or claim (whether contractual or non-contractual) arising out of or in connection with it, its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales; and
 - **20.2.2.ii** the courts of England shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) arising out of or in connection with this MSA, its subject matter or formation.

21. EXPORT RESTRICTIONS

- **21.1** The Solution, Services, content, and other technology that Company makes available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents it is not named on any U.S. government denied party list. Customer shall not permit Users or Occupiers to access or use any Service or content in a U.S. embargoed country (currently Cuba, Iran, North Korea, Sudan or Syria) or in violation of any U.S. export law or regulation.

[Archived terms at 13/08/2020](#)

