



# GENERAL TERMS AND CONDITIONS FOR SITE PROVISION

BY SUBSCRIBING FOR A SITE PLAN, THE CUSTOMER ACCEPTS AND AGREES TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS SET OUT BELOW.

## 1. INTERPRETATION

**Customer** means the person who purchases a Site Plan from the Supplier in accordance with these Conditions.

**Conditions** means these terms and conditions.

**Client** means any customer of the Customer which has entered into an agreement with the Customer in relation to the provision of access to the Portal to manage a subset of its Sites and Devices.

**Device** means any current or new device whose firmware supports connecting to the Portal which is used in order to remotely monitor or control a lighting, audio or other system.

**Device Points** has the meaning given in Condition 5.1.

**Portal** means the downstream web portal provided by the Supplier to the Customer.

**Portal Administrators** those persons designated by the Customer to act as administrators of the Portal.

**Renewal Date** has the meaning given in Condition 4.5.

**Services** means the downstream services to be provided by the Supplier to the Customer and/or the Users which are accessible via the Portal.

**Site** means a group of one or more Devices, which can be managed by a particular User or group of Users.

**Site Owner** means one or more Users with permission to administer the Site in accordance with Condition 12.

**Site Plan** a subscription for a Site for an initial specified duration, subject to adjustment in accordance with these Conditions.

**Purchase** has the meaning given in Condition 10.1.

**Super Administrator** means an appropriate employee of the Supplier or its designated subcontractors responsible for administering Portals and Sites.

**Supplier** means Pharos Architectural Controls Limited.

**Users** means those employees, agents and independent contractors of the Customer, or those of a Client, who are authorised by the Customer (via the Portal) to access Sites within the Portal in order to access and use the Services.

## 2. SITE CREATION

2.1. A Site can be created in one of the following ways

2.1.1. by the Supplier;

2.1.2. by the Customer in its own Portal by the Portal Administrator or by a User that has been granted required permission by the Portal Administrator; and

2.1.3. by a Customer or User through the use of a valid voucher.

## 3. SITE MODES

3.1. A Site can be in one of the three modes:

3.1.1. Construction – limited functionality;

3.1.2. Active – full functionality; or

3.1.3. Standby – no or limited functionality.

3.2. The features available in Construction and Standby modes can be changed at any time at discretion of the Supplier.

## 4. SITE MODE CHANGES

4.1. A Site created in accordance with Condition 2.1.1 or 2.1.2 is created in Construction mode.

4.2. A Site created in accordance with Condition 2.1.3 is created in Active mode.

4.3. From Construction mode, the Customer or User with relevant permission can move the Site to Active mode. A Site cannot move back to Construction mode.

4.4. When a Site moves to Active mode, a 7 day free trial is provided by the Supplier, unless otherwise agreed by the Supplier and the Customer.

4.5. An Active Site has the end of its period of Active mode listed in the Site as “Renewal Date”.

4.6. In order to remain in Active mode a Site must be renewed at or before the listed Renewal Date.

- 4.7. After passing the Renewal Date the Site will move to Standby mode. At the option of the Supplier, the Site may retain Active mode functionality for a limited period determined at the discretion of the Supplier.
- 4.8. The Supplier may move a Site to Standby mode if payment to keep the Site Active has not been made.

## 5. SITE PLANS

- 5.1. Compatible Devices will be given a designated number of points (**Device Points**); the total of number Device Points required for a given Site and the use of specific paid features determine which Site Plan is required.
- 5.2. The Site will indicate which Site Plan is required, depending on the number of Devices connected to the Site and optional paid features activated.
- 5.3. It is the responsibility of the Customer to ensure that the purchased Site Plan is of an equal or higher category than the required Site plan.
- 5.4. The terms of Site Plans and the allocation of Device Points may be changed from time to time at discretion of the Supplier.
- 5.5. A change of Device Points or Site Plans will not give rise to any obligation to make additional payment for any period prior the next Renewal Date of a given Site.
- 5.6. A Site Plan is purchased for a specific duration.
- 5.7. For the purposes of altering the duration of a Site Plan in accordance with these Conditions, the value of a Site Plan is split unequally over its duration, using the following weighting:  
(1st - 6th month = 12, 7th - 24th month = 8, 25th - 36th month = 7, 37th - 60th month = 5, after 61st month = 3).

## 6. CHANGING SITE PLANS

- 6.1. The Site Plan required for a given Site can change as a result of:
  - 6.1.1. adding or removing Devices;
  - 6.1.2. changing Devices to different device types; and
  - 6.1.3. enabling or disabling specific paid features.

## 7. CHANGE OF DEVICE POINTS OR SITE PLANS

- 7.1. It is the responsibility of the Customer to ensure the correct Site Plan is in place for any given Site.
- 7.2. A Customer may request a Site Plan upgrade in exchange for an earlier Renewal Date. Any such revised Renewal Date shall be calculated in whole months, rounded down to the nearest whole month.
- 7.3. If a Site is in a Site Plan of a lower category than the required Site Plan, the Supplier shall have the right at any time to apply the correct Site Plan and substitute a revised earlier Renewal Date.
- 7.4. A Customer may not downgrade the Site Plan for an Active Site in order to extend its Renewal Date.
- 7.5. Downgrading the Site Plan for an Active Site will not result in the issue of any credit or any reimbursement by the Supplier.

## 8. RENEWING SITE PLANS

- 8.1. A Site Plan may be renewed:
  - 8.1.1. by a User exchanging a valid voucher;
  - 8.1.2. if the 'auto renewal' toggle button has been turned on before the Renewal Date by a User with the relevant permission;
  - 8.1.3. if the 'renew site' button is pressed by a User with the relevant permission; or
  - 8.1.4. by agreement with the Supplier.
- 8.2. If a voucher for a certain Site Plan is applied, the Site will renew to the Site Plan specified in the voucher or the Site's current Site Plan, whichever is the higher category.
- 8.3. If a voucher is applied before the Renewal Date, the remaining term and category of the current Site Plan will be taken into account when calculating the new Renewal Date.
- 8.4. During the process of renewing a Site, the Site Plan can be downgraded or upgraded to match the required Site Plan, having regard to Device connections and other specific paid functionality.

- 8.5. Any new Renewal Date will be specified in months from the current Renewal Date, rounded down to the nearest whole month.

## 9. TERMINATION

- 9.1. A Site can be terminated by:
- 9.1.1. the Customer;
  - 9.1.2. Portal Owners or Users with valid permission to delete a Site,
- 9.2. in which event no refunds of any charges for Site provision (whether or not representing advance payments) will be provided.
- 9.3. A Site may be terminated by the Supplier immediately if:
- 9.3.1. the Customer or any User breaches any of these Conditions;
  - 9.3.2. if:
    - 9.3.3. the Site is in Construction mode for a period of 6 consecutive months; and
    - 9.3.4. no Device has been connected to the Site; and
    - 9.3.5. no User has been registered for the Site; or
  - 9.3.6. the Site is in Construction mode for a period of 24 consecutive months; or
  - 9.3.7. The Site is in Standby mode for a period of 12 consecutive months,
- 9.4. in which event no refunds of any charges for Site provision (whether or not representing advance payments) will be provided.
- 9.5. An Active Site may be terminated by the Supplier for any reason on not less than 6 months' notice to the Customer. In the event of termination on notice in accordance with this Condition 9.5, any charges which have been paid by the Customer in advance and which relate to any month following the date of termination shall be repayable by the Supplier for any complete month following the date of termination provided that, for the avoidance of doubt, no reimbursement shall be made for any charges referable to the month during which termination of the Site occurs.
- 9.6. Upon termination of a Site:
- 9.6.1. all Site data will be permanently removed; and
  - 9.6.2. all Devices will lose connection to the Site and the Customer shall be responsible for (locally) recommissioning to connect such Devices to another Site (if required).

## 10. SITE FEATURES

- 10.1. The Supplier shall support all Site features available at the time of purchase of a Site Plan (whether by purchase of voucher or otherwise) (**Purchase**).
- 10.2. The Supplier reserves the right to make non-material modifications to how features are presented at any time, provided these do not fundamentally alter the functionality of the relevant feature.
- 10.3. The Supplier may from time to time develop additional features. The Supplier shall notify the Customer of any relevant additional features and the proposed fee (if any) for implementation in the Customer's Site. Any purchase of additional feature(s) shall be at the discretion of the Customer.
- 10.4. The Supplier reserves the right to remove or disable any feature for technical reasons beyond the reasonable control of the Supplier but shall not otherwise remove or disable Site features available on Purchase.
- 10.5. For the avoidance of doubt the Supplier shall not seek to levy any additional charge following Purchase for any feature available for use by the Customer in substantially the same form without additional charge on Purchase.

## 11. SITE OWNERS

- 11.1. The Customer shall provide at least 1 User to be designated as a Site Owner. A Site Owner can migrate their permission to others when required.
- 11.2. The Supplier shall notify the Site Owner(s) of upcoming Site renewals and other relevant information.

## 12. SITE ACCESS

- 12.1. The Customer acknowledges and agrees that the designated Site Owner(s) are entitled to have access to and regulate access to the Site (including the ability to set permissions to enable users to invite other users to access the Site).
- 12.2. It is the responsibility of the Site Owner to ensure permissions, and permissions to set permissions, are granted appropriately by its User(s) in order to facilitate the Customer's desired operation of the Site.
- 12.3. When deemed necessary by the Supplier for security or the effective operation of a Site, or if requested by the Customer, Site permissions may be accessed only by an appropriate employee of the Supplier or its designated subcontractors (a Super Administrator). The Supplier shall limit the restriction of permission modifications to Super Administrators to circumstances where it is strictly necessary, and all relevant activity by the Super Administrator will be logged.

### 13. DEVICES

- 13.1. Devices connected to the Site are not included with the Site supply; Devices are sold separately by the relevant manufacturer or through their designated sales channels.
- 13.2. Keys to make a Device connect securely to a Site can be created from within the relevant Site by Users with the relevant permissions.
- 13.3. Devices will need an active internet connection to connect to a Site, this internet connection is to be obtained by the Customer at its cost.
- 13.4. The quantity of data used by a Device is outside controlled of the Supplier and as a result the Supplier cannot be held accountable for possible excessive data use of a Device.

### 14. DEMO SITES

- 14.1. A Demo Site will:
  - 14.1.1. be in Active mode regardless of the renewal Date and Site Plan; and
  - 14.1.2. be supplied free of charge.
- 14.2. At the discretion of the Supplier:
  - 14.2.1. a Site can be marked as Demo;
  - 14.2.2. a Site can be unmarked as Demo and placed in Construction mode; and
  - 14.2.3. a Demo Site can be provided with a specific Site Plan.

### 15. MIGRATION OF SITES

At the request of Customer and at the discretion of the Supplier a Site can be moved between Portals. In the event a Site is migrated to a different Portal, at the discretion of the Supplier the Site Plan may be terminated (in which case it shall be deemed to have been terminated by the Customer in accordance with Condition 9.1) or may move with the migrated Site.

### 16. SITE CONTENT

- 16.1. The Customer shall not (and shall procure that the Users shall not) access, store, distribute or transmit any viruses, or any material during the course of its use of a Site) that:
  - 16.1.1. is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  - 16.1.2. facilitates illegal activity;
  - 16.1.3. depicts illegal sexually explicit images;
  - 16.1.4. promotes unlawful violence;
  - 16.1.5. is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability;
  - 16.1.6. infringes any third party intellectual property right; or
  - 16.1.7. is otherwise illegal or causes damage or injury to any person or property.

### 17. SERVICE LEVEL COMMITMENTS

- 17.1. The Supplier will take reasonable endeavours to provide an uptime of 99.9%.
- 17.2. The Supplier will maintain security protocols to an equivalent standard as those applying on Purchase and shall use its reasonable endeavours to update security over time in accordance with good industry practice.

- 17.3. Updates to Sites may be undertaken at the discretion of the Supplier.
- 17.4. The Supplier shall notify the Customer of any significant changes via email at least 2 working days in advance of a Site update.
- 17.5. The Supplier shall use its reasonable endeavours to provide a first response to bug or other issues reported by email to the Supplier's designated support email address with 2 working days of receipt.
- 17.6. In the unfortunate event that a Device becomes unresponsive, the Supplier will provide remote support to assist in resolving the issue.
- 17.7. The Supplier is not responsible for any costs resulting from site visits by the Customer or any third party to resolve an issue.

### 18. HOSTING AND BACKUP

- 18.1. The Sites will be hosted by a service selected by the Supplier.
- 18.2. The Supplier or its subcontractors will ensure the data in the Sites is segregated with access restricted to approved Site Users, Portal Administrators and Super Administrators.
- 18.3. The Supplier shall follow its archiving procedures for Device Data as set out in its backup policy, available on request. The Supplier's backup policy may be amended by the Supplier in its sole discretion from time to time.
- 18.4. The Customer shall bear its own costs relating to its own Internet access necessary to access the Site.

### 19. FAIR USE POLICY

- 19.1. The Customer shall, and shall procure that its designated users use the Portal only for its intended purpose. No attempts will be made to identify limitations in performance or limitations or flaws in the security of the system, without the written consent of the Supplier.
- 19.2. In the event the Supplier detects a User is attempting to identify any such limitation, the Supplier may suspend that User from the Portal and will promptly notify the Customer.

### 20. DATA PROTECTION

- 20.1. For the purposes of this Condition 20, **Data Protection Laws** means any applicable laws and regulations in any relevant jurisdiction relating to the use or processing of personal data including EU Regulation 2016/679 (**GDPR**) and the terms **Data Subject**, **Personal Data**, **processing**, **processor** and **controller** shall have the meanings set out in the GDPR.
- 20.2. Each party shall comply with the provisions and obligations imposed on it by the Data Protection Laws when processing Personal Data in connection with the Portal and relevant Sites.
- 20.3. To the extent that a party processes any Personal Data on behalf of the other party, the processing party shall: (a) comply with the provisions and obligations imposed on a processor by the GDPR, including the stipulations set out in Article 28(3)(a)-(h) which form a part of, and are incorporated into, these Conditions as if they were set out in full, and the reference to "documented instructions" in Article 28(3)(a) shall include the provisions of these Conditions; and (b) not disclose any Personal Data to any Data Subject or to a third party other than at the written request of the other party or as expressly provided for in these Conditions.
- 20.4. If either party receives any complaint, notice or communication which relates to the processing of Personal Data by the other party or to either party's compliance with the Data Protection Laws, or if any Personal Data processed in connection with the Contract is subject to a personal data breach (as defined in the GDPR), it shall immediately notify the other party and provide the other party with reasonable co-operation and assistance in relation to any such complaint, notice, communication or personal data breach.

### 21. DATA

- 21.1. The system will store email, name and phone number for each User.
- 21.2. This personal data will be used for service-related functionality and communication and may be shared with the Supplier's designated technology partner solely for this purpose.
- 21.3. Upon written request by a User who no longer wishes to use the service, all personal data for the User will be permanently erased from the system.

- 21.4. The Customer shall own the Site data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Site data.
- 21.5. Data published by a Device belongs to the manufacturer, excluding project files and media content; project files and media content remain the property of their respective owners.

## 22. LIMITATION OF LIABILITY

- 22.1. Nothing in these Conditions excludes the liability of either party:
  - 22.1.1. for death or personal injury caused by negligence;
  - 22.1.2. for fraud or fraudulent misrepresentation; or
  - 22.1.3. for any liability which cannot be excluded at law.
- 22.2. Subject to Condition 22.1:
  - 22.2.1. the Supplier shall not be liable whether in contract, tort (including for negligence or breach of statutory duty), misrepresentation or otherwise for any loss of profits, loss of business, depletion of goodwill or loss or corruption of data or information, or for any indirect or consequential loss however arising; and
  - 22.2.2. the Supplier's total aggregate liability to the Customer in respect of all events arising in each calendar year whether in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the provision of one or more Sites to the Customer shall be limited to the greater of 100% of the total fees and charges paid by the Customer in the relevant calendar year and £10,000.

## 23. FORCE MAJEURE

The Supplier shall have no liability to the Customer if it is caused by acts, events, omissions or accidents beyond its reasonable control.

## 24. EXCLUSION OF THIRD PARTY RIGHTS

These Conditions are not enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person other than the Supplier and the Customer.

## 25. GOVERNING LAW AND JURISDICTION

- 25.1. These Conditions and any dispute or claim (whether contractual or non-contractual) arising out of or in connection with them, their subject matter or the formation of the related contract shall be governed by and construed in accordance with the law of England and Wales.
- 25.2. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) arising out of or in connection with these Conditions, their subject matter or the formation of the related contract.