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Omfax Systems Limited

Keyfax Cloud Terms & Conditions

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A detailed breakdown of Omfax Terms & Conditions for Keyfax cloud-based services

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1. Interpretation

Project Manager: the person appointed by the Licensor to fulfil the role described in clause 4.2(a).

Affiliate: includes in relation to the Licensor each and any subsidiary or holding company of the Licensor and each and any subsidiary of a holding company of the Licensor.

Authorised Agent: each and any agent, employee, contractor or subcontractor of the Customer, or any Affiliate who is engaged or employed by the Customer or any Affiliate for the purpose of, or in connection with, the permitted use, development, modification, or maintenance of the Software.

Completion Date: the date subsequently agreed between the parties by which the Licensor or its agent shall have configured and tested the Software and carried out the agreed services which the Customer is deemed to have accepted delivery in conformity with the documentation.

Customer contact service: services provided by the Customer to manage initial point of contact enquiries and requests from end users of their services.

Development Services: any services (including the services of consultants, project managers, programmers, system maintainers, outsourcing, or disaster recovery or other service Licensors) which are provided by the Licensor to the Customer or any Affiliate for the purpose of, or in connection with, the permitted use, development, modification, or maintenance of the Software.

Documentation: such documentation as may be issued by the Licensor to the Customer from time to time in relation to the Software.

Fee: includes the fees payable by the Customer to the Licensor under clauses 2.1 and 7.1.

Intellectual Property Rights: the patents, utility models, rights to inventions, copyright and related rights, trademarks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.

Licence: the licence granted under clause 2.1.

Manager: the person appointed by the Customer from time to time to fulfil the role described in clause 7.3.

Modification: any Maintenance Release or New Version.

New Version: any new version of the Software which from time to time is publicly marketed and offered for purchase by the Licensor in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product.

Scripts: the KEYFAX database containing the associated tables of enquiries, diagnostic questions and responses.

Software: the KEYFAX software as listed in Schedule 1, together with any Modifications in fulfilment of its obligations under this Licence.

Software Administrators: the persons appointed by the Customer from time to time in order to fulfil the roles described in clause 8.4.

Software Support Services: support services provided by the Licensor.

Standard Support Hours: 8.00 am to 6.00 pm, Monday to Friday, except on days which are bank holidays in England.

Stock: the housing stock managed by the Customer or for which it provides a customer contact service.

Third Party: any other party for which the Customer is acting as agent to carry out the purpose for which this Licence is granted to the Customer.

Users: designated licenced users of the Software (active users).

2. Licence

2.1. In consideration of the Fee (payable by the Customer to the Licensor at the beginning of the contract) the Licensor confers upon the Customer and its Affiliates, the non-exclusive, non-transferable licence (subject to the terms of the Licence agreement):

(a) to use the Software;

(b) to grant to any Authorised Agent a sub-licence to use the Software.

2.2. The Fee shall:

(a) be the amount specified in the license agreement;

(b) be payable in instalments, as set out in the license agreement.

2.3. In relation to scope of use:

(a) the Software to be used for the purpose of:
i. accessing and communicating with the KEYFAX Scripts of the Customer;
ii. transfer of data to the Customer's database;
iii. diagnosing enquiries or other actions required as part of the Customer's or a Third Party's Customer contact service.

(b) the Customer shall have no right to copy, adapt, reverse engineer, decompile, disassemble, reconfigure or modify the Software in whole or in part, except:
i. as permitted by law;
ii. to the extent that such action is approved by the Licensor as required for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Customer or any Affiliate.

2.4. The Customer may, subject to the terms of the Licence agreement, carry out such amendments additions or deletions to the Scripts as it considers necessary to reflect its own current service operations, provided that such amendments do not affect the ability of the Licensor to provide the software support.

2.5. In accordance with the terms hereof, the Customer hereby undertakes:

(a) to use the Software only for the purposes specified in clauses 2.3 and 2.4 above;

(b) to operate the Software only in accordance with the instructions provided by the Licensor;

(c) for the duration of the Licence to pay the Fees as set out in the license agreement;

(d) upon termination of the Licence, for whatever reason, to cease to use the Software.

2.6. The Licensor may at any time assign, novate, charge or deal in any other manner with any or all of its rights and obligations under this licence, provided it gives written notice to the Customer.

3. Configuration and Handover

3.1. The Licensor or its agent shall deliver, configure and test the Software by the date agreed with the Customer.

3.2. The Completion Date shall be a date subsequently agreed between the parties, which shall be evidenced by the Licensor producing a Handover Certificate.

4. Development & Consultancy Services

4.1. In consideration of the Fees, the Licensor agrees to provide Development & Consultancy Services to assist the Customer to configure the Software and to develop a set of KEYFAX Scripts intended to enable a user to use the Software to generate appropriate actions, as the case may be.

4.2. In relation to the Project Manager:

(a) the Licensor shall appoint a Project Manager who shall be responsible for the co-ordination of all matters relating to the configuration of the Software and the provision of the Development & Consultancy services;

(b) the Customer may request, on reasonable grounds, the replacement of the Project Manager or any other member of the Support Staff.

4.3. In addition to its Project Manager, the Licensor shall provide sufficient Support Staff to fulfil its obligations under the terms of the license agreement. The Support Staff shall be suitably trained and experienced in the configuration and support of the Software and the provision of the Development Services.

4.4. The Licensor shall ensure that the Project Manager and each member of the Support Staff and any other employee, agent or subcontractor of the Licensor engaged in the supply of the Services or any other services supplied under the license agreement, shall at all times devote his entire time, attention, skill and ability to the same while on the premises of the Customer.

4.5. The Licensor alone shall be responsible for the supervision, direction, control, wages, taxes, national insurance and benefits of the Project Manager and the Support Staff. The Licensor assumes full responsibility for their acts and omissions and acknowledges that they are not employees or agents of the Customer.

5. Further terms relating to the services

5.1. The Licensor shall, without additional charge, co-operate with the Customer in the Customer's application of acceptance tests to the Software.

5.2. The Licensor shall ensure that, while on the Customer's premises, the Project Manager, the Support Staff and all other persons who enter such premises with the authority of the Licensor for the purpose of, or in connection with, the license agreement or the provision of the Services, adhere to the Customer's security procedures and health and safety regulations.

6. Payment

6.1. Orders are subject to prices as stated in the quotation or tender supplied by Omfax to the Customer:

(a) quotations and prices are valid for a period of 3 months from the date of the quotation, or such other time as specified in the quotation;

(b) quotations itemise the level of involvement required from Omfax Systems to deliver a successful implementation of the product/s detailed;

(c) charges and prices may be amended by Omfax after expiry of the quotation period.

6.2. Terms of payment:

(a) payment is to be made within 30 days from the date that the invoice is received;

(b) invoicing for the implementation shall be made in two stages:

i. the first invoice shall be submitted at the outset of the project on receipt of Purchase Order;
ii. the second invoice shall be submitted on completion of the installation of software, or 90 days after receipt of order, whichever is sooner;
iii. the second invoice will also be accompanied by an invoice for the License & Hosting Annual Fee.

(c) invoicing for request for work shall be submitted at completion of the work, or 90 days after receipt of order, whichever is sooner;

(d) payments shall not be affected by the existence of any defect, whether or not such defect is the subject of a claim;

(e) Approximately thirty (30) days prior to expiry of the hosting period, the Licensor will bill one hundred (100) percent of the fee for a further year or request a further purchase order from the Customer.

6.3. Fees for Consultancy and Other Services:

(a) Where a service is to be undertaken on a Fixed Price basis:

i. fifty (50) percent of the Fixed Price will be billed to the Customer in advance, prior to the Supplier commencing work and;
ii. fifty (50) percent of the Fixed Price will be billed to the Customer upon completion of the service.
(b) Where a service is to be undertaken on a Time & Materials basis, the total number of days spent on delivering the service will be multiplied by the Standard Daily Rate and one hundred (100) percent of this total value will be billed to the Customer upon completion of the service.

7. The Customer's responsibilities

7.1. The Customer shall nominate a Manager to be available to liaise with, and respond to, queries from the Project Manager.

7.2. The Customer shall nominate Software Administrators to undertake amendments to Scripts and carry out other amendments to the Software (including changes to designated users of the Software) as permitted by the license agreement, provided:

(a) nominated Software Administrators undertake Administrator Training provided by the Licensor;

(b) amendments to Scripts are only carried out by nominated Software Administrators after receiving the Administrator Training provided by the Licensor.

8. Warranties

8.1. The Licensor warrants to use all reasonable care and skill in the performance of its obligations and in the development of the Software and of the Scripts for the Customer.

8.2. In the event of the Customer being dissatisfied with the performance of the software, this licence or of the support services, they shall immediately notify the Licensor in writing. If the Licensor fails to remedy such performance in conformity with the terms of the licence agreement, the Customer shall be entitled to withhold payment of the Fees on giving thirty (30) days written notice to do so.

9. Intellectual Property Rights

9.1. The Customer acknowledges that the Software (including any amendments, additions or deletions thereto made by the Licensor) and any and all copyright, trade mark or other intellectual property rights of whatever nature that subsist or may subsist in or in connection with the same, are and shall remain the property of the Licensor or its licensor absolutely. Any copyright, trade mark or other intellectual property in any amendments, additions or deletions made in the Software by the Customer whether now or in the future, are hereby assigned to the Licensor with full title guarantee.

10. Termination

10.1. In relation to termination:

(a) this licence may be terminated:

i. by the Customer at any time by three month's written notice to the Licensor, such notice to expire at the end of the current Maintenance Period;
ii. by the Licensor immediately by written notice to the Customer if the Customer fails to pay the fee in accordance with the license agreement.

10.2. The termination of the license agreement shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

10.3. Upon termination of the licence agreement for any reason the Customer and its Affiliate and any Divested Entity shall cease to use the Software.

10.4. Either party shall have the right to terminate this Licence forthwith in the event:

(a) the other party fails to comply with any term or condition of the licence agreement and where such failure is capable of remedy fails to remedy such failure after being given thirty (30) days written notice to do so; or

(b) the other party shall have a receiver or administrative receiver appointed or shall pass a resolution for winding up or liquidation (otherwise than for the purpose of a bona fide scheme of amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the other party shall become subject to an administration order or shall enter a voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business.

10.5. Termination of the license agreement shall be without prejudice to the accrued rights of the parties, in particular the Licensor's right to any instalments of the Fees which remain outstanding.

11. Effect of termination

11.1. Neither party shall have any further obligation to the other under the license agreement after its termination.

11.2. Any provision of the license agreement which expressly or by implication is intended to come into or continue in force on or after termination.

11.3. Termination, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

12. Force Majeure

12.1. The Licensor shall be under no liability to the Customer in any way whatsoever for failure to perform its contractual obligations if such failure arises out of war, rebellion, civil commotion, strikes, lock-outs and industrial disputes, fire, explosion, earthquake, act of God, flood, drought or bad weather, the unavailability of deliveries, supplies, software, disks or other media or the requisitioning or other act or order by any government department, council or other constituted body or any other cause beyond the party's reasonable control.

13. Duration

13.1. Supply of the Services by the Licensor to the Customer shall commence on the date of the license agreement and, subject to termination, shall continue for a fixed term of one year (Initial Term).

13.2. If the Customer elects to extend the term of the license agreement, it shall notify the Licensor before the expiry of the Initial term, whereupon the license agreement shall be extended for a further period of one Contract Year on the same terms.

14. Assignment

14.1. The Customer shall not be entitled to assign sub-licence or otherwise transfer this Licence without the prior written consent of the Licensor which should not be unreasonably withheld.

14.2. The Licensor shall be entitled to assign the benefit and the burden of this Licence or any part thereof to such assignee agreeing in writing with the Customer to abide by the obligations imposed on the Licensor by this Licence.

15. Confidentiality

15.1. The Licensor warrants not to use the Customer's name or reference for any promotion, marketing or advertising, without prior approval of the Customer.

15.2. The foregoing obligations as to confidentiality shall remain in full force and effect, notwithstanding the expiry or termination of the license agreement.

16. Support

16.1. The Licensor shall make reasonable efforts to provide a Support Request Response to a Support Request in a timely manner, at no cost to the Customer.

16.2. Where a Support Request relates to a problem with the Product, the Licensor will endeavour to determine the root cause to identify if the issue is a Nonconformity, at no cost to the Customer.

16.3. The Licensor will endeavour to rectify any identified Nonconformity in a timely manner, at no cost to the Customer.

16.4. Where a Support Request relates to a problem with the Product that is not deemed a Nonconformity and the Customer requests further assistance from the Licensor, this will be deemed either a modification request or activity to be conducted on a time and materials basis.

16.5. The Licensor is deemed to have provided a Support Request Response once it has replied to the Support Request by email, telephone or other means.

16.6. Support Request Response times are measured from the moment that the Licensor receives the Support Request from the Customer and only apply during working hours.

16.7. Following the Support Request Response, the Licensor will endeavour to conclude its activities related to a Support Request within the following timescales (Resolution Targets):

(a) where the Support Request is “Critical” (meaning the Product in a Live Environment is offline or otherwise inaccessible to all users) the Licensor will seek to conclude activities within three (3) working days;

(b) where the Support Request is “Essential” (meaning the Product in a Live Environment has a system fault which would cause operations to be significantly affected by lack of early resolution) the Licensor will seek to conclude activities within five (5) working days;

(c) where the Support Request is “Important” (meaning the Product in a Live Environment has a system fault with a possible work around) the Licensor will seek to conclude activities within twenty (20) working days;

(d) where the Support Request is “Useful” (meaning the Product in a Live Environment has a minor fault or cosmetic problem) the Licensor will seek to conclude activities by the next appropriate version release of software.

16.8. As intended as targets only, the Licensor shall not be held liable if it fails to conclude its activities within the Resolution Targets outlined, however the Licensor will endeavour to keep the Customer informed of progress and/or estimated timescales.

16.9. Where a Product is not covered by a Support and Hosting Annual Fee, the Licensor cannot provide timescales for Support Request Responses nor Resolution Targets and any and all activity related to a Support Request and/or identification and rectification of any Nonconformity, shall be conducted on a Time and Materials basis.

17. Indemnity & Liability

17.1. The Customer agrees to indemnify and hold the Licensor harmless against all and any claims, damages, losses, costs and expenses, including legal fees, arising out of the breach of contract or any other liabilities arising out of the use of the Products or Services by the Customer or any other person whose access to them is attributable to the Customer or its employees, contractors, sub-contractors, consultants and anyone else to whom the Customer makes available the Product or Services (whether permitted by the Licensor or not).

17.2. The Licensor shall have no liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, which fall within any one of the following categories:

(a) erroneous/unexpected script outcomes because of script modification.

(b) failure to correctly access or interpret underlying data.

(c) other system, component malfunction or outage, e.g. connectivity, email services, scheduled jobs.

18. Product Hosting & Performance

18.1. The Product will be hosted in the United Kingdom on an infrastructure supplied by a sub supplier 'Microsoft Azure' to which the Licensor has full access.

18.2. The Licensor shall endeavour to provide the Customer with five (5) days advance notice of Scheduled Downtime unless, in the opinion of the Licensor, Scheduled Downtime is required urgently (as part of a response to a security issue, for example).

18.3. The Licensor is not liable for any Unscheduled Downtime caused by the Customer or a third party, nor is the Licensor liable for any Scheduled Downtime.

19. Delivery Commitments

19.1. Delivery commitments are entered into in good faith but are not guaranteed, and the Licensor shall not be liable for any loss or damage due to failure to deliver on a specified date, howsoever caused. Nor shall failure be deemed to be breach of Contract.

19.2. If delivery of work is required sooner than the normal time needed for its proper production, the Licensor will make every effort to secure freedom from defect, but reasonable allowances must be made by the Customer in such cases. Should such earlier delivery necessitate additional costs being incurred, a charge will be made to cover the increased costs.

19.3. Cancellation of an Order, in whole or in part, cannot be accepted without the written consent of Omfax, which shall only be given in the following circumstances:

(a) the Customer fully indemnifies Omfax against any loss howsoever caused, resulting from the cancellation of the Order; and

(b) the Customer returns any materials belonging to Omfax including, without limitation, equipment, tools, drawings, documents, specifications, and data; and

(c) the Customer makes payment in full to Omfax for the goods and/or services provided.

20. General

20.1. Failure or neglect by the Licensor to exercise or enforce at any time any of its rights shall not be deemed to be a waiver of any such right nor operate to bar the exercise or enforcement of such right at any time by the Licensor nor in any way affect the validity of the whole or any part of this Licence.

20.2. This Licence together with the Appendices constitutes the entire agreement between the parties for the provision of the Software. No modifications or amendments shall be valid unless made in writing and signed by authorised signatories of each party. The Customer acknowledges that this Licence is not entered into in reliance upon any representation made but not embodied in this Licence.

20.3. If any part, term or provision of this Licence be held invalid, illegal or unenforceable, the remaining terms and provisions shall continue to be valid to the fullest extent permitted by applicable law.

20.4. It is agreed and understood that the Customer is not the agent, partner, joint venturer or representative, of the Licensor and has no authority or power to bind or contract in the name of or to create any liability against the Licensor, in any way or for any purpose.

20.5. This Licence shall be governed by, and construed in accordance with, the laws of England and Wales.