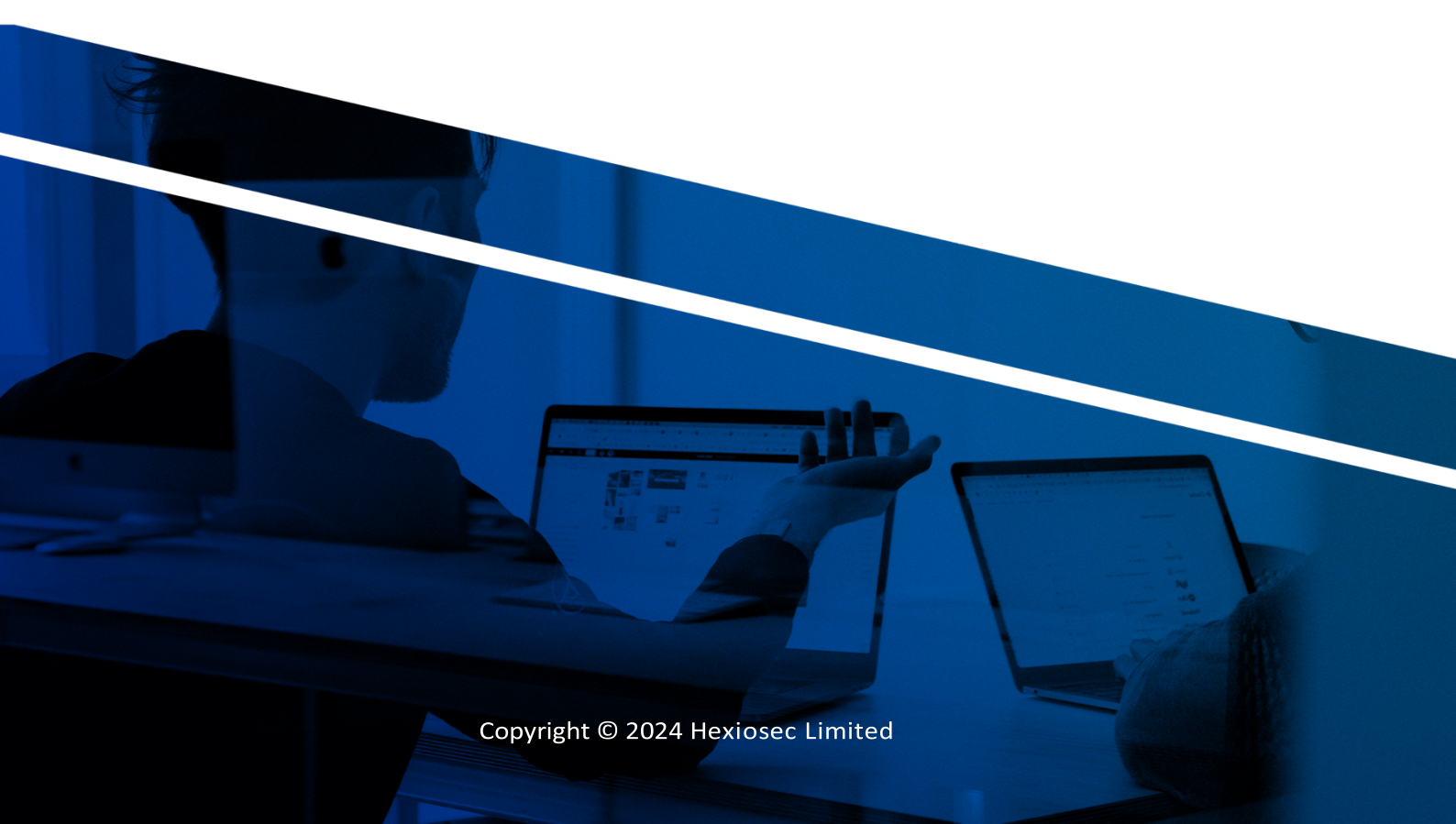


# Hexiosec ASM

## Terms of Service and Acceptable Use Policy

October 2024



## Hexiosec ASM Terms of Service

### THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CLAUSE 14

#### 1. INTERPRETATION

The definitions and rules of interpretation in Schedule 1 apply to these Terms.

#### 2. ABOUT THE SUPPLIER

- 2.1 Hexiosec Limited (the **Supplier**) is a company registered in England and Wales with company number 11223788 and its registered office is at Eagle Tower, Montpellier Drive, Cheltenham, United Kingdom, GL50 1TA. Its VAT number is 297 9607 32.

#### 3. THE SUPPLIER'S CONTRACT WITH THE CUSTOMER

- 3.1 These terms and conditions (**Terms**) apply to the Order by the Customer and supply of Services by the Supplier to the Customer. They apply to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 3.2 The Contract is the entire agreement between the Customer and the Supplier in relation to its subject matter. The Customer acknowledges that the Customer has not relied on any statement, promise or representation or assurance or warranty that is not set out in the Contract.
- 3.3 These Terms and the Contract are made only in the English language.

#### 4. PLACING AN ORDER AND ITS ACCEPTANCE

- 4.1 The Customer should follow the onscreen prompts to place an Order via the Supplier's website. The Supplier's website ordering process allows the Customer to check and amend any errors before submitting its order to the Supplier. Each Order is an offer by the Customer to buy the Services specified in the Order subject to these Terms.
- 4.2 The Customer should check its Order carefully before submitting it and must ensure that its Order and any specification submitted by it are complete and accurate.
- 4.3 After the Customer places its Order via the Supplier's website, the Customer will receive an email from the Supplier acknowledging that the Supplier has received it, but this does not mean that the Customer's Order has been accepted. The Supplier's acceptance of the Customer's Order will take place as described in clause 4.4.
- 4.4 The Supplier's acceptance of the Customer's Order takes place when the Supplier issues its written acceptance of the Customer's Order or if earlier takes steps to fulfil the Customer's Order, at which point and on which date the Contract between the Customer and the Supplier will come into existence. The Supplier may accept the Customer's Order by sending its invoice to the Customer.
- 4.5 Any descriptions or illustrations on the Supplier's website are published for the sole purpose of giving an approximate idea of the Services described in them. They will not form part of the Contract or have any contractual force.
- 4.6 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.

## 5. SERVICES

- 5.1 During the Term and subject to the Supplier's right to amend the specification of the Services under clause 5.2 the Supplier will supply the Services and may make Documentation available to the Customer in accordance in all material respects with the Contract.
- 5.2 From time to time the Supplier may make changes to the features and functionality of the Services and the Software. The Supplier may also amend the specification of the Services and the Software if required by any applicable statutory or regulatory requirement. The Supplier may but is not obliged to notify the Customer of such event and such notice may be published in the Documentation or on the Supplier's website.
- 5.3 The Supplier will, as part of the Services provide the Customer with the Supplier's standard customer support services during the Supplier's normal business hours in accordance with the Supplier's support services policy in effect at the time that the Services are provided. The Supplier may amend its support services policy in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at the Supplier's then current rates.
- 5.4 Any dates quoted for delivery of the Services (including any performance dates specified in the Order) are approximate only, and the time of delivery is not of the essence.
- 5.5 For the avoidance of doubt the Customer agrees that nothing in the Contract shall oblige the Supplier to support the Customer System.

## 6. SUPPLIER'S OBLIGATIONS

- 6.1 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 6.2 The undertaking at clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform to the foregoing undertaking, the Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 6.1. Notwithstanding the foregoing, the Supplier:
- 6.2.1 does not warrant that the Customer's use of the Services will be uninterrupted or error-free or that the Services, Documentation, Software and/or any other information obtained by the Customer through the Services will meet the Customer's requirements; or; and
- 6.2.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Software may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

## 7. USER ACCESS

- 7.1 Subject to the restrictions set out in this clause 7 and the other terms and conditions of the Contract, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sub-licences, to permit the Users use the Services during the Term solely for the Customer's internal business operations.

- 7.2 In relation to Users, the Customer undertakes that:
- 7.2.1 The maximum number of Users that it authorises to access and use the Services shall not exceed the number of User Accounts it is authorised to use from time to time;
  - 7.2.2 It will not allow or suffer any User Account to be used by more than one individual User unless it has been reassigned in its entirety to another individual User, in which case the prior User shall no longer have any right to access or use the Services;
  - 7.2.3 each User shall keep their password, multi-factor authentication codes or other tokens for their access and use of the Services secure and confidential;
  - 7.2.4 it shall permit the Supplier to audit the Services from time to time.
- 7.3 The Customer shall, and shall procure that Users shall, comply with the Acceptable Use Policy in relation to its and their use of the Service.
- 7.4 The Customer shall not, and shall procure that Users shall not, access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that: is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; promotes unlawful violence; is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or is otherwise illegal or causes damage or injury to any person or property.
- 7.5 The Customer shall not, and shall procure that Users shall not, attempt to circumvent or disable the Software or any security features or other technological functionality or features of the Software and the Services.
- 7.6 Notwithstanding any other provision in these Terms, if there is a Security Event, the Customer is in breach of clauses 7 and/or 9 and/or the Customer or any User fails to comply with the Acceptable Use Policy, the Supplier may (but shall not be obliged to), without liability or prejudice to its other rights and without prior notice to the Customer disable the Customer's access to the Services, Software or any material that breaches the Acceptable Use Policy for so long as the relevant breach and/or Security Event remains unremedied or unresolved.
- 7.7 The Customer shall not and shall procure the Users shall not:
- 7.7.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under the Contract:
    - 7.7.1.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
    - 7.7.1.2 attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
  - 7.7.2 access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
  - 7.7.3 use the Services and/or Documentation to provide services to third parties except as expressly permitted under the Contract; or

- 7.7.4 subject to clause 7.7.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except as expressly permitted under the Contract, or
  - 7.7.5 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 7.
- 7.8 The rights provided under this clause 7 are granted to the Customer only and shall not be considered granted to any subsidiary or holding company of the Customer.
- 7.9 If the Customer wishes to obtain additional User Accounts, the Customer shall submit a written request to the Supplier. The activation of additional User Accounts shall be subject to the Supplier's prior written agreement (such agreement not to be unreasonably withheld).
- 8. **THIRD PARTY PROVIDERS**
  - 8.1 The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not the Supplier. The Supplier recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.
- 9. **THE CUSTOMER'S OBLIGATIONS**
  - 9.1 The Customer shall:
    - 9.1.1 co-operate with the Supplier in all matters relating to the Services;
    - 9.1.2 provide the Supplier, the Supplier's employees, agents, consultants and subcontractors, with access to the Customer System, security access information and configuration services as the Supplier may reasonably require in order to provide the Services in accordance with the Contract;
    - 9.1.3 provide the Supplier with such information, data and materials the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all respects;
    - 9.1.4 comply with all applicable laws and regulations (including all applicable technology control or export laws and regulations) with respect to the Customer's activities under the Contract;
    - 9.1.5 carry out all other Customer responsibilities set out in the Contract in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
    - 9.1.6 procure that the Users use the Services, Software and the Documentation in accordance with the terms and conditions of the Contract and shall be responsible for any User's failure to comply with the terms of the Contract applicable to such User;

- 9.1.7 obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under the Contract, including without limitation the Services;
  - 9.1.8 ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
  - 9.1.9 maintain its network connections and telecommunications links from its systems to the Supplier's software and data repositories, and the Supplier shall not be liable for any problems, conditions, delays, delivery failures and any other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.
- 9.2 The Customer warrants that it is the owner or authorised licensee of the Customer Data and the Supplier's use in the provision of the Services of any Customer Data or other third-party materials supplied by the Customer to the Supplier for use in the provision of the Services shall not cause the Supplier to infringe the rights, including any Intellectual Property Rights, of any third party.
- 9.3 If the Supplier's ability to perform the Services is prevented or delayed by any failure by the Customer to fulfil any obligation listed in clauses 7 and 9 (**Customer Default**):
  - 9.3.1 the Supplier will be entitled to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve the Supplier from the performance of the Services, in each case to the extent the Customer Default prevents or delays performance of the Services. In certain circumstances the Customer Default may entitle the Supplier to terminate the Contract under clause 16 (Termination);
  - 9.3.2 the Supplier will not be responsible for any costs or losses the Customer sustains or incurs arising directly or indirectly from the Supplier's failure or delay to perform the Services; and
  - 9.3.3 it will be the Customer's responsibility to reimburse the Supplier on written demand for any costs or losses the Supplier sustains or incurs arising directly or indirectly from the Customer Default.
- 10. **CUSTOMER DATA**
  - 10.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data. The Supplier is not responsible for checking, cleaning or verifying the accuracy and quality of Customer Data or the Service as a result of processing any incomplete, inaccurate or poor quality Customer Data supplied to the Supplier (or any of its employees, agents or sub-contractors) by or on behalf of the Customer.
  - 10.2 The Supplier shall follow its standard archiving and back-up procedures for Customer Data; as such procedures may be amended by the Supplier in its sole discretion from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such data maintained by the Supplier. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data and the Supplier system maintenance and back-up).
  - 10.3 The Customer acknowledges and agrees that Supplier (and its authorised sub-contractors and suppliers acting on the Supplier's behalf) may process data collected from or received by

it in relation to the Customer's use of the Services and may use such data for research and development purposes including for the purposes of updating and improving the Services generally for all customers of the Supplier.

## 11. DATA PROTECTION

11.1 Both parties will comply with all applicable requirements of Applicable Data Protection Laws. This clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.

11.2 The parties acknowledge that:

11.2.1 if the Supplier processes any personal data on the Customer's behalf when performing its obligations under the Contract, the Customer is the controller and the Supplier is the processor for the purposes of the Applicable Data Protection Laws; and

11.2.2 the personal data may be transferred or stored outside the EEA or the country where the Customer and the Users are located in order to carry out the Services and the Supplier's other obligations under the Contract.

11.3 Without prejudice to the generality of clause 11.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Customer Personal Data to the Supplier for the duration and purposes of the Contract so that the Supplier may lawfully collect, use, process and transfer the Customer Personal Data in accordance with the Contract on the Customer's behalf.

11.4 The following clauses apply if and to the extent that the Supplier processes personal data on the Customer's behalf in connection with the performance by the Supplier of its obligations under the Contract in which case, in relation to such personal data:

11.4.1 The Supplier shall process that Customer Personal Data only on the documented written instructions of the Customer unless the Supplier is required by Applicable Laws to otherwise process that Customer Personal Data. Where the Supplier is relying on Applicable Laws as the basis for processing personal data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;

11.4.2 The Supplier shall not transfer any personal data outside of the European Economic Area and the United Kingdom unless the following conditions are fulfilled:

11.4.2.1 the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;

11.4.2.2 the data subject has enforceable rights and effective legal remedies;

11.4.2.3 the Supplier complies with its obligations under Applicable Data Protection Laws by providing an adequate level of protection to any personal data that is transferred; and

11.4.2.4 the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;

11.4.3 The Supplier shall assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under

the Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

- 11.4.4 The Supplier shall notify the Customer without undue delay on becoming aware of a personal data breach;
  - 11.4.5 at the written direction of the Customer and the Customer's cost, the Supplier shall delete or return personal data and copies thereof to the Customer on termination of the Contract unless required by Applicable Law to store the personal data (and for these purposes the term "delete" shall mean to put such data beyond use); and
  - 11.4.6 the Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause 11.4 and immediately inform the Company if, in the opinion of the Supplier, an instruction infringes Applicable Data Protection Laws.
  - 11.4.7 The Supplier may appoint sub-processors of personal data. The Supplier will notify the Customer if it intends to change such sub-processors (which notice may be given by way of a general notice or other communication via the Supplier's website (**Change Notice**). The Customer is deemed to have accepted the change unless it notifies any objection to the Supplier within 5 days of receipt of a Change Notice (**Objection**). At any time following receipt of an Objection, if no alternative arrangement can be agreed the Supplier may either not appoint the subcontractor or may by giving notice to the Customer suspend or terminate that part of the Service that is affected by the Change Notice without liability to the Customer. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 11.
- 11.5 Each party shall ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).

## 12. **CHARGES AND PAYMENT**

- 12.1 The Customer shall pay the Fees to the Supplier for the Services in accordance with this clause 12.1 and the Order.
- 12.2 All sums shall be paid within 14 days of the date of the Supplier's invoice or as otherwise agreed in writing by the Supplier. Time for payment shall be of the essence and no payment shall be deemed to have been received until the Supplier has received cleared funds.
- 12.3 If the Supplier has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of the Supplier:
  - 12.3.1 the Supplier may, without liability to the Customer, disable the Customer's access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
  - 12.3.2 the Supplier may charge interest on such sum from the due date for payment at the annual rate of 8% above the base lending rate from time to time of the Bank of

England, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment.

- 12.4 All sums due to the Supplier under the Contract shall be payable in pounds sterling and are exclusive of value added tax or other applicable sales tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 12.5 The Supplier may increase the Fees on an annual basis with effect from the first anniversary of the Effective Date by giving written notice to the Customer. Any change in the Fees will take effect on the expiry of 30 days following the date of the Supplier's notice given pursuant to this clause 12.5.
- 12.6 The Supplier may charge additional fees for new or additional features or functionality that the Supplier may make available from time to time as part of the Services.
- 12.7 Notwithstanding clause 12.5, at any time during the Term, the Supplier may, by giving not less than 21 days written notice to the Customer increase the price of the Services to reflect any increase in the cost of the Services that is due to any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, increase in the cost of fuel and increases in labour, materials and other supply costs) and the price increase shall take effect on the expiry of the notice period.
- 12.8 If the Customer wishes to change the scope of the Services after the Supplier accepts the Customer's Order, and the Supplier agrees to such change, the Supplier will modify the Fees accordingly.
- 12.9 The Customer must pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

### 13. **INTELLECTUAL PROPERTY RIGHTS**

- 13.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all Intellectual Property Rights in the Services, the Software and the Documentation. Except as expressly stated in the Contract, the Contract does not grant the Customer any rights to, or in, any Intellectual Property Rights or any other rights or licences in respect of the Software and the Documentation.
- 13.2 Any display of the Services and/or Software by the Customer shall credit, wherever technically and commercially feasible, the Supplier, any licensor of the Supplier or any other source of the Software specified by the Supplier as the source of the Software. Any such credit shall be in such form as the Supplier may require from time to time.
- 13.3 Without prejudice to the rights of the Customer or any third party to challenge the validity of any Intellectual Property Rights of the Supplier, the Customer shall not do or authorise any third party to do any act which would or might invalidate or be inconsistent with any Intellectual Property Rights of the Supplier and shall not omit or authorise any third party to omit to do any act which, by its omission, would have that effect or character.
- 13.4 Other than the licences expressly granted under the Contract, neither party grants any licence of, right in or makes any assignment of any of its Intellectual Property Rights.

### 14. **LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

- 14.1 Nothing in these Terms shall limit or exclude the Supplier's liability for:

- 14.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - 14.1.2 fraud or fraudulent misrepresentation;
  - 14.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 14.2 Subject to Clause 14.1 and Clause 14.3:
- 14.2.1 the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Contract; and
  - 14.2.2 the Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the fees paid by the Customer in accordance with the Contract or (where the Contract operates for more than 12 months) the fees shall be deemed to be the average sum paid to the Supplier in a 12 month period of the Contract.
- 14.3 Subject to clause 14.1 and except as expressly and specifically provided in the Contract:
- 14.3.1 the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;
  - 14.3.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Contract; and
  - 14.3.3 the Services and the Documentation are provided to the Customer on an "as is" basis.
- 14.4 This clause 14 shall survive termination of the Contract.
15. **CONFIDENTIALITY**
- 15.1 Each party undertakes that it shall keep the confidential information of the other party confidential and shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 15.2.
- 15.2 Each party may disclose the other party's confidential information:
- 15.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 15; and

- 15.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 15.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.
- 15.4 The parties agree that the Supplier may make a public announcement, communication or circular (announcement) concerning the fact that the Customer is a customer of the Supplier and that the Supplier has entered into the Contract with the Customer.
- 15.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of confidential information caused by any third party.
- 15.6 The above provisions of this clause 15 shall survive termination of the Contract, however arising.
16. **TERM AND TERMINATION**
- 16.1 The Contract shall commence on the date specified in the Order (**Effective Date**). Unless terminated earlier in accordance with this clause 16, the Contract shall continue until terminated by either party giving not less than 30 days written notice to the other party.
- 16.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 16.2.1 the other party commits a material breach of any other term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 15 days after being notified in writing to do so;
- 16.2.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or an administrator or administrative receiver is appointed over the other party or its assets or an order is made for the winding up of that other party or any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in this clause 16.2.2;
- 16.3 The Supplier may terminate the Contract immediately by notice in writing if the Customer is in breach of its obligations under clauses 7 and/or 9.
- 16.4 On termination of the Contract for any reason any outstanding balance becomes immediately due and payable and all licences granted under the Contract shall immediately terminate.
- 16.5 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.
- 16.6 Termination of the Contract for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
17. **GENERAL**
- 17.1 No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 17.2 Except for the Customer's obligation to make payment, neither party shall be in breach of the Contract or liable for delay in performing or failure to perform any of its obligations under the

Contract if such delay or failure results from events, causes or circumstances beyond its reasonable control.

- 17.3 No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 17.4 The Contract constitutes the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover. Each of the parties acknowledges and agrees that in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Contract or not) relating to the subject matter of the Contract, other than as expressly set out in the Contract. Each of the parties irrevocably and unconditionally waives any right it may have (whether to claim damages or otherwise) for any representation warranty arrangement understanding promise assurance statement draft agreement or implication (whether made innocently or negligently and whether written or oral) not contained in the Contract or for any breach of any representation (whether made innocently or negligently and whether written or oral) not contained in the Contract. Nothing in this clause 17.4 or any other provision of the Contract shall exclude any party's liability in respect of any fraud or fraudulent misrepresentation made by or on behalf of that party.
- 17.5 The Customer shall not, without the Supplier's prior written consent, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 17.6 Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or bind the other in any way.
- 17.7 A person who is not party to the Contract shall have no right to enforce any term of the Contract.
- 17.8 Notice given under the Contract shall be properly served only if it is in writing, sent by email, first class pre-paid post (or by airmail post if to an address outside the country of posting) to the receiving party, at the address, email address given in the Contract or notified to the other party in some other way. Any notice shall be deemed to have been received: (a) if delivered by hand, at the time of delivery; (b) if sent by post 2 working days after the notice shall have been posted (5 working days if sent by airmail post); (c) if sent by email, at 9.00 am on the next working day after completion of transmission (provided that an error free transmission report has been received by the sender). This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 17.9 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 17.10 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

## Schedule 1

### DEFINITIONS AND INTERPRETATION

1. The definitions and rules of interpretation in this Schedule apply in these Terms.

|                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|----------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Acceptable Use Policy</b>           | the Supplier's acceptable use policy set out on the Supplier's website and as amended from time to time.                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Applicable Data Protection Laws</b> | means:<br>To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.<br>To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data.                                                                                                                                                                                                                    |
| <b>Applicable Laws</b>                 | means:<br>To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom.<br>To the extent EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject.                                                                                                                                                                                                                                                                                                                           |
| <b>Contract</b>                        | the contract between the Supplier and the Customer formed in accordance with clause 4.4 for the supply of the Services in accordance with these Terms and the Order.                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Customer</b>                        | the person or firm who purchases the Services from the Supplier.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Customer Data</b>                   | the data inputted or transferred by the Customer, Users, or the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Customer Personal Data</b>          | any personal data which the Supplier processes in connection with the Contract, in the capacity of a processor on behalf of the Customer.                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Customer System</b>                 | any information technology system or systems owned or operated or used by the Customer and/or any User from which Customer Data originates and/or to which Customer Data are delivered or within which Customer Data is distributed in accordance with the Contract, including any mobile device owned or operated by the Customer or any User, the Customer's data processing facilities, hosted services provided to the Customer by a third party, data files and documents needed for processing and systems for the permissioning and control of the Software and the Services. |
| <b>Documentation</b>                   | the documentation that may be made available to the Customer by the Supplier online via the Supplier's website or provided by the Customer to the Supplier which sets out a description of the services provided by the Supplier to the Customer and the user instructions for such services.                                                                                                                                                                                                                                                                                        |
| <b>Effective Date</b>                  | has the meaning set out in clause 16.1.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

|                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|-------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>EU GDPR</b>                      | the General Data Protection Regulation ((EU) 2016/679).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Fees</b>                         | the fees payable by the Customer for the provision of the Services (including the Software and the User Accounts) by the Supplier, as set out in the Order.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Intellectual Property Rights</b> | patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, trade names and domain names, rights in get-up, rights to goodwill or to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, 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. |
| <b>Order</b>                        | The Customer's order for Services as placed via the Supplier's website or as set out in the Customer's purchase order form or the Customer's written acceptance of the Supplier's quotation as the case may be.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>Security Event</b>               | any unauthorised third party access to the Software and/or the Services; or<br>any use of the Software and/or the Services by the Customer that is in breach of the Acceptable Use Policy and/or has the potential to damage the Software and/or the Services or adversely affect other customers' use of the Software.                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Services</b>                     | the services provided by the Supplier to the Customer under the Contract via the Software, as more particularly described in the Documentation.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>Software</b>                     | the software applications provided by the Supplier as part of the services provided by the Supplier to the Customer under the Contract.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Term</b>                         | The duration of the Contract as specified in clause 16.1.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>UK GDPR</b>                      | has the meaning given to it in the Data Protection Act 2018.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>User Accounts</b>                | the user subscriptions granted to the Customer by the Supplier which entitle Users to access and use the Services in accordance with the Contract.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Users</b>                        | those employees, agents or independent contractors of the Customer who are authorised to use the Services and the Documentation.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Virus</b>                        | any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme                                                                                                                                                                                                                                                                                    |

or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

2. **Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures** have the meanings given to them in the UK GDPR.
3. Clause, schedule and paragraph headings shall not affect the interpretation of these Terms.
4. A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
5. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
6. A reference to a statute or statutory provision is a reference to it as it is in force as at the date of the Contract.
7. A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of the Contract under that statute or statutory provision.
8. References to clauses and schedules are to the clauses and schedules of these Terms; references to paragraphs are to paragraphs of the relevant schedule to the Contract.
9. Any words following the terms **including, include, in particular** or **for example** or any similar phrase shall be construed as illustrative and shall not limit the generality of the related general words. Any obligation on the Customer not to do something includes an obligation not to allow that thing to be done.
10. A reference to writing or written includes e-mail or on line communication through the Service but excludes fax communication.

## Hexiosec ASM Acceptable Use Policy

PLEASE READ THE TERMS OF THIS POLICY CAREFULLY BEFORE USING HEXIOSEC ASM

### **What's in these terms?**

This acceptable use policy sets out the standards that apply when you use Hexiosec ASM (Hexiosec ASM).

### **Who we are and how to contact us**

Hexiosec Limited (company number 11223788) is a company registered in England and Wales and its registered office is at Eagle Tower, Montpellier Drive, Cheltenham, United Kingdom, GL50 1TA. Its VAT number is: 297 9607 32. Hexiosec Limited operates Hexiosec ASM.

To contact us, please email [support@hexiosec.com](mailto:support@hexiosec.com).

### **By using Hexiosec ASM you accept these terms**

By using Hexiosec ASM, you confirm that you accept the terms of this policy and that you agree to comply with them. If you do not agree to these terms, you must not use Hexiosec ASM. If you are a business you must ensure that your employees, agents and sub-contractor who access and use Hexiosec ASM are made aware of and comply with these terms.

We recommend that you print a copy of these terms for future reference.

### **We may make changes to the terms of this policy**

We amend these terms from time to time. Please check these terms regularly to ensure you understand the terms that apply at the relevant time of your use of Hexiosec ASM.

### **Prohibited uses and conduct**

You may use Hexiosec ASM only for lawful purposes. You may not use Hexiosec ASM:

- In any way that breaches any applicable local, national or international law or regulation or any code of practice.
- In any way that is unlawful or fraudulent or has any unlawful or fraudulent purpose or effect.
- In a way that may expose us to criminal liability.
- For the purpose of harming or attempting to harm minors in any way.
- To bully, insult, intimidate or humiliate any person.
- To store, reproduce, transmit, communicate or receive any material in breach of any law, regulations, code of practice.
- To knowingly transmit any data, send or upload to Hexiosec ASM any material that contains viruses, Trojan horses, worms, time-bombs, keystroke loggers, spyware, adware or any other harmful programs or similar computer code designed to adversely affect the operation of any telecommunications device, computer software or hardware.
- to make or send hoax calls or messages;

- in a manner which, in our opinion, is likely to have a detrimental effect on the quality of Hexiosec ASM or any other service that we may provide to our customers;

You also agree:

- Not to reproduce, duplicate, copy or re-sell any part of Hexiosec ASM.
- Not to access without authority, interfere with, damage or disrupt any part of Hexiosec ASM, any equipment or network through which Hexiosec ASM is provide, any software used in the provision of Hexiosec ASM or any equipment or network or software owned or used by any third party.
- Not to attempt to disable any security features or other technological functionality or features of Hexiosec ASM.
- Not to license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit Hexiosec ASM except as expressly agreed in writing by us.

You agree not to upload, store, transmit or procure the sending of any material that:

- Is defamatory of any person.
- is obscene, offensive, hateful or inflammatory.
- Includes child sexual abuse material or is sexually explicit
- Promotes violence.
- Promotes discrimination based on race, sex, religion, nationality, disability, sexual orientation or age.
- Infringes any copyright, database right or trade mark of any other person.
- Is likely to deceive any person.
- Breaches any legal duty owed to a third party, such as a contractual duty or a duty of confidence.
- Promotes any illegal content or activity.
- Is in contempt of court.
- Is threatening, abuse or invade another's privacy, or cause annoyance, inconvenience or needless anxiety.
- Is likely to harass, upset, embarrass, alarm or annoy any other person.
- Impersonates any person or misrepresents your identity or affiliation with any person.
- Gives the impression that the material emanates from us if this is not the case.
- Advocates, promotes, incites any party to commit, or assists any unlawful or criminal act such as (by way of example only) copyright infringement or computer misuse.
- Contains a statement which you know or believe, or have reasonable grounds for believing, that members of the public to whom the statement is, or is to be, published are likely to understand as a direct or indirect encouragement or other inducement to the commission, preparation or instigation of acts of terrorism.

You must notify us immediately if you become aware of any unauthorised use of Hexiosec ASM.

### **Responsibility for content**

Hexiosec ASM may facilitate the creation, storage, transmission, dissemination, submission or other access to user generated content. You accept that we are not responsible for any such material. We are under no obligation to oversee, monitor or moderate any user generated content created, submitted, or accessible through Hexiosec ASM, and we expressly exclude our liability for any loss or damage arising from the use of any user generated content by a user in contravention of our content standards.

### **Breach of this policy**

When we consider that a breach of this acceptable use policy has occurred, we may take such action as we deem appropriate.

Failure to comply with this acceptable use policy constitutes a material breach of the terms upon which you are permitted to use Hexiosec ASM, and may result in our immediate, temporary or permanent withdrawal of your right to use Hexiosec ASM.

We may also suspend your right to use Hexiosec ASM without liability to you if required to do so by any government, court or regulatory authority.

We exclude our liability for all action we may take in response to breaches of this acceptable use policy. The actions we may take are not limited to those described above, and we may take any other action we reasonably deem appropriate.

### **How this contract can be transferred**

We can transfer our rights and obligations under these terms to any third party, provided this does not adversely affect your rights under these terms.

### **Which country's laws apply to any disputes?**

The terms of this policy, its subject matter and its formation (and any non-contractual disputes or claims) are governed by English law. We both agree to the exclusive jurisdiction of the courts of England and Wales.