



## OMS SERVICE AGREEMENT TERMS AND CONDITIONS

---

### **Definitions**

- a) "The Client" shall mean the developer;
- b) "The Service Provider" shall mean OMS;
- c) "The Occupant" shall mean the party living in the Property;
- d) "The Property" shall mean the address to which the message relates;
- e) "The Service" shall mean the Occupant Messaging Service.

### **1 The Service**

- 1.1 The Service Provider has offered and the Client has accepted these Terms and Conditions to provide the Service to the Client.
- 1.2 During the period of the OMS Service Agreement, the Service Provider may accept and perform engagements from other companies, firms or persons.

### **2 Confidentiality**

The parties will at all times keep confidential the terms of the OMS Service Agreement and any other information acquired in consequence of the OMS Service Agreement, except for information which they are bound to disclose by law or they are requested to disclose by regulatory agencies or information given to their professional advisers and Customers where reasonably necessary.

### **3 Commencement and Termination**

- 3.1 The OMS Service Agreement shall commence upon receipt of the first month's payment and shall continue for 30 days beyond the last month's payment.
- 3.2 Notwithstanding paragraph 3.1, either party may terminate the OMS Service Agreement immediately where:
  - 3.2.1 the Service Provider shall provide 30 days written notice to the Client;
  - 3.2.2 the Client advises the Service Provider they no longer require the Service or ceases to make further payments;
  - 3.2.3 either party (being a natural person) dies, is imprisoned or suffers injury or illness such that the OMS Service Agreement cannot be performed or (being a partnership or other unincorporated association) is dissolved;
  - 3.2.2 either party, being a company, passes a resolution for winding up (other than for the purposes of a solvent reconstruction or amalgamation where the resulting entity assumes all of the obligations under the OMS Service Agreement of the relevant party) or a court makes a winding up order in respect of that other party or that other party has a receiver, administrative receiver, manager or administrator appointed of all or part of its undertaking and assets;

- 3.2.3 either party ceases or threatens to cease to carry on its business or is unable to pay its debts or becomes insolvent (within the meaning of the Insolvency Act 1986) or makes or proposes to make any arrangement or composition with its creditors;
- 3.2.4 either party is in material breach of any term of the OMS Service Agreement and has failed to remedy the breach within 7 days after receiving notice in writing requiring it to do so.
- 3.3 Any termination of the OMS Service Agreement shall be without prejudice to the rights of either party against the other in respect of anything done or omitted hereunder prior to such termination or in respect of any sums or other claims outstanding at the time of such termination.
- 3.4 Termination of the Client Service Agreement as provided above shall not put an end to the obligations contained in clause 2 (Confidentiality).

#### **4 Payment**

- 4.1 In consideration of the Service to be provided by the Service Provider, the Client shall pay the Service Provider either £100 plus VAT monthly (up to 20 plots pa) or £195 plus VAT monthly (21-50 plots pa). The first month's fee shall be invoiced at the date of signature of the OMS Service Agreement and every 30 days thereafter. The Service shall commence when the first month's payment has been received and shall conclude 30 days after the last month's payment is received.
- 4.2 The Service Provider may suspend the Service due to late payment.

#### **5 The Service Provider's obligations**

- 5.1 The Service Provider shall at all times during the period of the OMS Service Agreement:
  - 5.1.1 faithfully and diligently perform the Service with at least reasonable skill and care. All other warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law;
  - 5.1.2 shall not be responsible for the remedy of any defective build work;
  - 5.1.3 shall not be responsible for making arrangements to remedy any defective build work;
  - 5.1.4 shall not be responsible for communications with the Occupant.

#### **6 The Client's obligations**

- 6.1 The Client shall at all times during the period of the OMS Service Agreement:
  - 6.1.1 diligently assist the Service Provider in performing its duties under the OMS Service Agreement;
  - 6.1.2 notify the Service Provider within 2 working days of all legal completion dates as they arise;
  - 6.1.3 shall not (and whether directly or indirectly solely or jointly and whether on your own behalf or on behalf of any other person, firm or company), solicit, endeavour to entice or accept the services of any person who at any time during the period of engagement has been an employee of the Service Provider;

#### **7 Assignment and subcontracting**

The Service Provider may sell, assign, sub-contract or transfer any duties, rights or interests created under the OMS Service Agreement subject to the provision of prior written notice to the Client.

#### **8 Waiver**

Failure or delay by either party to exercise any rights resulting from a breach of the OMS Service Agreement by the other shall not be a waiver of such rights in such breach or any subsequent breach.

#### **9 Limitation**

- 9.1 Subject to clause 9.3, under no circumstances shall the Service Provider be liable for any special, direct, indirect or consequential damage of any nature whatsoever.
- 9.2 Subject to clause 9, the liability of the Service Provider to the Client arising out of or in connection with the OMS Service Agreement, shall be limited to £5,000,000 for all Public liability claims made against the Service Provider arising from any one occurrence and £5,000,000 for all Product liability claims made

against the Service Provider for any one occurrence. Additionally, the Service Provider shall have Employer's liability cover of up to £10,000,000 for any one claim or series of claims arising out of any one cause.

- 9.3 Nothing in this clause 9 will operate or be construed to operate so as to exclude or restrict the liability of the Service Provider for fraud or death or personal injury caused by the negligence of the Service Provider.

## **10 Notices**

Any notice to be given by a party under the OMS Service Agreement must be in writing and must be given by delivery at or sending first class post or facsimile transmission or other means of telecommunication in permanent written form to the last known postal address or relevant telecommunications number of the other party. Where notice is given by sending in a prescribed manner it will be deemed to have been received when in the ordinary course of the means of transmission it would be received by the addressee. To prove the giving of a notice it will be sufficient to show it was dispatched. A notice will have effect from the sooner of its actual or deemed receipt by the addressee.

## **11 Law, Jurisdiction and Dispute Resolution**

- 11.1 The OMS Service Agreement shall be construed in accordance with English Law.
- 11.2 Either party has the right to refer any dispute or difference arising under, out of or in relation to the OMS Service Agreement to adjudication in accordance with the Technology and Construction Solicitors Association Adjudication Rules current at the date of the OMS Service Agreement.
- 11.3 Subject to clause 11.2, any dispute or difference arising under, out of or in relation to the Service Provider shall be submitted to the jurisdiction of the English courts.

## **12 Contracts (Rights of Third Parties) Act 1999**

A person who is not party to the OMS Service Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the OMS Service Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.