

Encompass Customer Terms and Conditions

Where the parties have entered into an agreement in writing on paper, which is signed by the parties, that agreement shall apply instead of, and take precedence over, this Agreement.

1. INTERPRETATION

Capitalised expressions in the body of the Agreement have the meaning given to them, and the following definitions apply:

Acceptable Use Terms means the terms relating to use of the Encompass Platform set out in the [Acceptable Use, Compliance and Data Processing Terms](#).

Affiliate means in relation to a party, any person who controls, is controlled by, or is under common control with, that party, and **control** means the beneficial ownership of more than fifty percent (50%) of the issued share capital of, or the legal power to direct or cause the direction of, the person in question (or its holding company as the case may be) and **controlled** shall be construed accordingly.

Agreement means, in the case of an Order, the body of this document, the Acceptable Use Terms, the Compliance Terms, the Data Processing Terms, and the Order, and in any other circumstances in which the Encompass Service is used by any End User, the body of this document, and the Acceptable Use Terms, the Compliance Terms, and the Data Processing Terms, as applicable to the Encompass Service used from time to time by the End User.

Business Days means Monday to Friday excluding public and bank holidays in England and Wales

Charges means the fees payable in consideration of the provision of the Services set out in the Order, and where no fees are stated to be payable in the Order, all costs in respect of the Encompass Materials only.

Commencement Date means the date of the Order or, if earlier, the date on which an End User first uses the Encompass Service.

Compliance Terms means the terms relating to compliance by Encompass with applicable law relating to anti-bribery and corruption, and by the parties with applicable law relating to the prevention of modern slavery, set out in the [Acceptable Use, Compliance and Data Processing Terms](#).

Confidential Information means in relation to a party, the terms of this Agreement, and all other information and trade secrets relating to that party's business or customers which come into the possession of the other party pursuant to this Agreement, including, in the case of Encompass, the Encompass Platform and the data, information, works and materials available through the Encompass Platform, and in the case of the Customer, the Customer Data, but excluding information that (i) was already in the possession of or becomes available to the other party free of any duty of confidentiality on the date of its disclosure; (ii) is in the public domain or becomes public, other than as a result of a breach of this Agreement; or (iii) required to be disclosed pursuant to law or regulation or in connection with proceedings before a court or for the purpose of receiving legal advice, but only to the extent and for the purpose of that disclosure.

Customer means the person identified as such on the Order, and in any other circumstances the person whom the individual who accesses the Encompass Service with the consent of Encompass represents.

Customer Data means all information and data provided by the Customer or its Affiliates to Encompass for the purposes of use of the Services and the Encompass Materials.

Data Processing Terms means the terms which govern the processing of personal data comprised in the Customer Data set out in [Acceptable Use, Compliance and Data Processing Terms](#).

Data Provider means any provider of data to the Encompass Platform.

Encompass means **Encompass Corporation UK Limited**, a company incorporated in Scotland with company number SC493055.

Encompass Materials means all data, information, works and materials obtained by the Customer or its Affiliates (as appropriate) through use of the Encompass Service in accordance with the Agreement in the form processed by the Customer or its Affiliates (as appropriate) using the Encompass Platform.

Encompass Platform means the proprietary web-based application, including application programming interfaces, owned by Encompass which consolidates corporate, personal, property, asset and other data sets from certain public and private sources, in such form as Encompass releases from time to time.

Encompass Service means access to the Encompass Platform and the data, information, works and materials available to the Customer through the Encompass Platform from time to time.

End User means a person approved by Encompass who has access to the Encompass Service.

Implementation Service means the services, including training, described in the Order to bring into productive use the Encompass Service.

Initial Term means the subscription term (if any) stated in the Order, and in any other case, twelve (12) months.

Insolvency Event means each and any of the following in relation to a party: (a) any action (corporate or otherwise), legal proceedings or other procedure or step taken by any person in any jurisdiction in relation to or with a view to: (i) the winding up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of a party; (ii) the appointment of a liquidator, trustee in bankruptcy, receiver, administrative receiver, administrator, nominee, supervisor or similar officer in respect of a party or any of its assets; (iii) the enforcement of any security over any assets of a party; or (iv) the attachment, sequestration, distraining upon or execution over or affecting any material asset of a party, which in any case is not withdrawn or dismissed as soon as reasonably practicable; (b) the party is unable to pay its debts as they fall due or is insolvent, or the other party perceives (acting reasonably) that to be the case; and (c) the party enters into a composition or arrangement with any creditor, or its creditors or any class of them.

Intellectual Property Rights means any and all patents, trademarks, business names, copyright, moral rights, database rights, rights in designs, rights in inventions, and any and all other intellectual property rights, whether or not registered or capable of registration and whether subsisting anywhere in the world and including all applications and rights to apply for any of them together with all or any associated goodwill.

Licence has the meaning given to it in clause 4.1.

Order means a written request by the Customer (in terms agreed with Encompass) for the provision of the Services in such form as Encompass may require, and the **date of the Order** is the date on which the request is sent to Encompass according to its records.

Renewal Term means each period of twelve (12) months commencing at midnight on the last day of the Initial Term and each anniversary of it.

Service Levels means, in relation to the Encompass Service, the service levels available for inspection at [Service Management – Fault Severity](#).

Services means the Implementation Service and the Encompass Service, or any of them.

Subscription Period means the Initial Term and successive Renewal Terms.

Website www.encompasscorporation.com

2. DURATION

Encompass shall begin on the Commencement Date and lasts for the Subscription Period unless a party gives at least sixty (60) days' notice to the other to expire at the end of the Initial Term or Renewal Term (as appropriate).

3. SERVICES

Encompass shall supply the Implementation Service with reasonable care and skill and make available the Encompass Service in accordance with the Service Levels with effect from thirty (30) days after Encompass has notified the Customer that the Encompass Service is ready for use. Encompass may change the Encompass Platform or the Encompass Service from time to time and shall provide reasonable prior notice to the Customer.

4. GRANT OF LICENCE BY ENCOMPASS

4.1 Subject to clause 5 and to compliance by the Customer with this Agreement, Encompass hereby grants to the Customer and, where the Order so provides, its Affiliates, a non-exclusive, non-transferable licence (**Licence**) to:

4.1.1 use the Encompass Service;

4.1.2 use, copy, adapt, translate, arrange and alter Encompass Materials, including storage in electronic retrieval systems in the possession or control of the Customer; and

4.1.3 disclose the Encompass Materials (as those Encompass Materials may be copied, adapted, arranged or altered from time to time) (i) to potential and actual clients of the Customer or its Affiliates and to professional advisers with whom the Customer or its Affiliates deals in the ordinary course of business, including providing confirmation of the searches performed and whether or not the results indicate that dealing with an actual or potential client would comply with applicable law, provided that in each case the disclosure is an incidental part of the relationship between the Customer or its Affiliates and the third party; and (ii) in connection with legal proceedings before a court of competent jurisdiction or under any court order, or for the purpose of receiving legal advice, but only to the extent and for the purpose of that disclosure.

4.2 The Customer shall not, and shall procure that End Users shall not (i) except to the extent permitted by applicable law, adapt, translate, arrange or alter the Encompass Platform, or reverse engineer, decompile or disassemble the Encompass Platform; (ii) breach the scope of the Licence; (iii) circumvent or avoid the use of any security device or process designed to protect against unauthorised or unlawful use of the Encompass Service or the Encompass Platform, (iv) without affecting clause 4.1.3, use the Services for the benefit of any third party, other than an Affiliate of the Customer where the Order so provides, including for, or in connection with, the provision of services which consist in whole or part in the use of the Services; (v) redistribute, retransmit, or disseminate the Encompass Materials; or (v) use the Services otherwise than in accordance with this Agreement.

5. DATA PROVIDERS

The use of the Encompass Service and the Encompass Materials are subject to the terms for the benefit of Data Providers which Encompass notifies the Customer from time to time, including via the Website, the Encompass Platform, or by making them available for inspection at a reasonable location. Where there is any conflict or inconsistency between this Agreement (excluding such terms) and those terms, the latter prevail to the extent of the conflict or inconsistency for the benefit of the relevant Data Provider.

6. GRANT OF LICENCE BY THE CUSTOMER

The Customer hereby grants to Encompass a non-exclusive licence (together with the right to sublicense its agents, contractors, and providers of services) to use data relating to the use of the Encompass Service by End Users for the purpose of (i) anonymising and aggregating the data with data relating to use of the Encompass Service by other customers, (ii) analysing use of the Encompass Service and preparing documents and reports, and (iii) disclosing and otherwise exploiting such documents and reports, but not so as to disclose the identity of the Customer, its Affiliates or End Users.

7. CHARGES

7.1 The Customer shall pay the Charges without set-off in respect of any liability of Encompass within thirty (30) calendar days after the date of the invoice, except that all Charges outstanding on the date of termination become immediately due and payable. The Customer will be issued with Encompass invoices on the billing frequency indicated on the Order in advance.

7.2 The Charges are non-refundable and are exclusive of value added tax which shall be added to the Charges by Encompass and paid by the Customer.

7.3 Payments made by methods other than Direct Debit with Encompass' preferred payment provider may be subject to an administrative surcharge of 12.5% of the Charges.

7.4 The Customer shall pay Encompass all applicable Charges in the currency indicated on the Order Form. Where currency is not referred to, the Charges will be paid in Pound Sterling. The Customer authorises Encompass to charge the Customer for all applicable Charges using the Customer's selected payment method.

7.5 Encompass may charge the Customer automatically at the end of the Initial Term and Renewal Terms.

8. PERFORMANCE

8.1 Where the Encompass Service is provided in accordance with the Service Levels (but not otherwise), Encompass undertakes that the Encompass Platform shall process searches accurately, and shall present data, information, works and materials received from the systems of Data Providers accurately and completely.

8.2 Encompass' sole liability, and the Customer's exclusive remedy for a failure to provide, or the defective or delayed provision of the Services, or a breach of clause 8.1, shall be for Encompass to re-perform the Services as soon as reasonably practicable.

- 8.3 Subject to this clause 8, the Services are provided, and the Encompass Service and the Encompass Materials are licensed, in the condition in which they are supplied, and Encompass gives no assurance (whether by way of representation, warranty, undertaking or otherwise) as to their operation, quality, conformance to description or sample, functionality or performance.
- 8.4 The data of a Data Provider are accessible in the form and manner, subject to such restrictions, according to the timing, and for so long as, the data are published or made available to Encompass by the Data Provider; Encompass undertakes no obligation or responsibility, and excludes all liability, under or in connection with this Agreement in relation to the data of a Data Provider, the acts or omissions of a Data Provider, or the systems used by the Data Provider, including (i) the failure of a Data Provider to publish or make available any data, (ii) the withdrawal or suspension of, or the imposition of restrictions on the use of or access to, any data previously published or made available by the Data Provider, or (iii) the delay of a Data Provider in publishing or making available any data.
- 8.5 Encompass shall (i) as soon as reasonably practicable, notify the Customer if Encompass is unable or fails to, or is likely to be unable or fail to, provide the Services to a material degree, or of any other circumstances which prevent or hinder or which may reasonably be expected to prevent or hinder Encompass from undertaking the Services to a material degree, and otherwise disclose to the Customer any development that may have a material and adverse impact on its ability to perform the Services, and (ii) co-operate with the Customer and any competent authority having authority in relation to the Customer or its Affiliates which are entitled to the Services, including in connection with the discharge or exercise of any legal or regulatory duty, or any investigation by or on behalf of the Customer, such Affiliates, or competent authority, and that co-operation may include access to documentation, information, data, and premises in the possession or control of Encompass.
9. **AUDIT**
Encompass is entitled on reasonable notice from time to time to audit use of the Encompass Service and the Encompass Materials under the Agreement, and for this purpose to access premises and systems occupied by the Customer or its Affiliates and copy records of such use.
10. **TERMINATION**
- 10.1 Either party may by giving notice to the other terminate this Agreement from the date of expiry of the notice if the other commits a material breach of this Agreement which, in the case of a breach capable of remedy, is not remedied within thirty (30) Business Days after the other has given notice containing details of the breach, and requiring the breach to be remedied; failure to pay the Charges is a material breach of this Agreement, and the period to which this clause refers (for the purpose of remedying the breach) is ten (10) Business Days.
- 10.2 Either party may at any time, by notice to the other, terminate this Agreement from the expiry of the notice if an Insolvency Event occurs in relation to the other.
11. **CONSEQUENCES OF TERMINATION**
- 11.1 Termination of this Agreement does not affect the rights or liabilities of the parties which have accrued in accordance with this clause 11 or otherwise have accrued due on or before termination, and shall not affect the continuance in force of clauses 6, 8.4, 12, 13, 14, and 15, which survive termination of this Agreement.
- 11.2 The Licence ends immediately upon termination of this Agreement, except that the Customer may retain and use the Encompass Materials acquired by the Customer prior to the date of termination.
- 11.3 Subject to clause 11.4, the Customer is entitled by notice in writing to Encompass, received within the three (3) months after the date of termination of this Agreement, to request the delivery-up of the Customer Data in the possession or control of Encompass, and Encompass shall provide a copy of the Customer Data in a .csv format or such other industry standard format that the Customer requires (acting reasonably) as soon as reasonably practicable after receipt of the Customer's notice.
- 11.4 Encompass is entitled to retain Customer Data, in accordance with the Agreement, for the purpose of Encompass's records retention policy or (if earlier) until such time as the Customer Data may not be retained in accordance with law or regulations.
12. **INTELLECTUAL PROPERTY RIGHTS**
- 12.1 Other than the Licence, the Customer acquires no right, title or interest in or to the Encompass Platform, the Encompass Service or the Encompass Materials, or any of the Intellectual Property Rights subsisting in or relating to the Encompass Platform, the Encompass Service or the Encompass Materials, and all rights are reserved to Encompass.
- 12.2 Encompass shall defend the Customer or its Affiliates authorised to use the Services (**Relevant Licensees**) against, or at the option of Encompass settle, any claim, allegation, action, dispute or proceedings (**Claims**) that use of the Services in accordance with this Agreement infringes any Intellectual Property Rights, and shall be responsible for any damages, reasonable costs (including legal fees) and expenses incurred by or awarded against the Relevant Licensees as a result of or in connection with any Claim; this clause constitutes the Customer's exclusive remedy and Encompass's only liability for Claims.
- 12.3 If Encompass is unable, using reasonable efforts, to cure an infringement of Intellectual Property Rights, Encompass may terminate this Agreement and refund any Charges prepaid in respect of the unexpired term of this Agreement.
13. **CONFIDENTIALITY**
Each party undertakes to the other in relation to the Confidential Information of the other to keep confidential all Confidential Information, not to disclose Confidential Information without the other's prior written consent except to those personnel of the party or its Affiliates (including independent contractors operating under the direction and control of the party or any of its Affiliates only) who have a need to know the Confidential Information and otherwise in accordance with this Agreement, and not to use Confidential Information except for the purposes of performing its obligations or exercising its rights under this Agreement.
14. **INDEMNITY AND THIRD PARTY CLAIMS**
- 14.1 The Customer shall indemnify Encompass, its Affiliates, Data Providers, and its or their officers, employees, agents and contractors (**Indemnified Persons**) in respect of all loss or damage incurred or sustained by the Indemnified Persons arising from or in connection with any claim by any third party (other than for infringement of Intellectual Property Rights) relating to any act performed under the Licence by End Users, or by or on behalf of the Customer or its Affiliates.
- 14.2 The rights of any person to be indemnified under this Agreement in respect of claims of third parties (**Third Party Claim**) are subject to and conditional on that person (i) as soon as reasonably practicable giving Encompass or the Customer (being the party against which the indemnity is claimed (as appropriate)) written notice of the claim; (ii) not admitting liability or making any offer, promise, compromise, settlement or communication in respect of the claim; (iii) surrendering to Encompass or the Customer (as appropriate) or its insurers in the name of the indemnified party conduct of the defence, settlement or counterclaim of the Third Party Claim; (iv) providing to Encompass or the Customer (as appropriate) or its insurers all reasonable information and assistance in connection with the defence or settlement of the Third Party Claim (as appropriate); and (v) where the indemnified party is a Relevant Licensee, the Customer having complied with this Agreement.
15. **LIMITATION OF LIABILITY**
- 15.1 This clause sets out the maximum liability of Encompass in respect of a breach by Encompass of this Agreement, including any wilful or deliberate breach of contract, or a tortious act or omission (including negligence), breach of statutory duty or misrepresentation, of Encompass in connection with this Agreement, (**Event of Default**), and all other liability is excluded, except that nothing in this Agreement affects the liability of Encompass for death or personal injury, fraud, under clause 12.2, or any other liability to the extent it cannot be excluded or limited by law.
- 15.2 Encompass's total financial liability for all Events of Default in each period of twelve (12) months or part thereof (during the term of this Agreement commencing on the Commencement Date and each anniversary of the Commencement Date (**Contract Year**) shall not exceed an amount equal to the Charges paid and payable from time to time during the Contract Year.
- 15.3 In no event shall Encompass be liable as a result of an Event of Default for loss of profit, loss of reputation, loss of business, revenue or goodwill, anticipated savings, loss or damage to data, or for any consequential or indirect loss, and regardless of whether the loss or damage would arise in the ordinary course of events, is reasonably foreseeable, is in the contemplation of the parties, or otherwise.
- 15.4 All warranties, conditions or terms not set out in this Agreement and which would otherwise be implied or incorporated into this Agreement by statute, common law or otherwise (other than as to title to goods and statutory interest) are hereby excluded except to the extent they may not be excluded or limited by law.
- 15.5 The Customer undertakes that it shall not bring any claim against any individual employee or officer of Encompass in respect of or relating to any Event of Default.
16. **RIGHTS OF THIRD PARTIES**
This Agreement does not create, confer or purport to confer any benefit or right enforceable by any person not a party to it, other than the following persons are beneficiaries under the provision to which this clause refers, and may enforce the benefit of it under the Contracts (Rights of third parties) Act 1999, except that the parties may rescind or vary the provision in question without the consent of the relevant third party: (i) Affiliates to which the Order refers are entitled to the benefit of the Customer's rights under the Agreement to the extent they use the Services; (ii) Indemnified Persons, clause 14.1; (iii) each individual to which clause 15.5 refers, that clause; and (iv) competent authorities in respect of any right expressly conferred on competent authorities under this Agreement.
17. **PUBLICITY**
Subject to obtaining the Customer's prior consent (not to be unreasonably withheld or delayed), Encompass may identify the Customer as a user of the Encompass Service, and the Customer agrees to provide editorial input and approve (acting reasonably) content for (i) a press release to be used within ninety (90) days after the Commencement Date, stating that the Customer has acquired the Encompass Service, including a statement from a senior executive in the Customer's organisation on why the Encompass Service was chosen, and (ii) a case study to be released within twelve (12) months after the Commencement Date, describing the Customer's use of the Encompass Service, including a statement from a senior executive in the Customer's organisation on the benefits gained.
18. **GENERAL**
- 18.1 This Agreement constitutes the entire agreement between the parties relating to its subject matter, and supersedes all representations, including all pre-contract representations, misrepresentations, and misstatements negligently or innocently made, agreements, negotiations or understandings between the parties, relating to its subject matter; neither party shall have any right in relation to any statement not set out in this Agreement on which it relied in entering into this Agreement.
- 18.2 The obligations of Encompass under this Agreement shall be suspended for so long as and to the extent that their performance is prevented, hindered or delayed by any event which is beyond the reasonable control of Encompass, including acts of God, war, terrorism, fire, and natural disasters.
- 18.3 All notices under this Agreement may be sent by electronic mail provided each is confirmed immediately afterwards by sending a copy in writing to the address of the recipient set out in this Agreement. In each case, the written notice must be marked for the attention of the Company Secretary. Another address in the UK may be notified at any time. Any written notice shall be delivered personally or by first class pre-paid letter and will be deemed to be served if by hand when delivered, and if by first class post, 48 hours after posting.
- 18.4 Any failure or neglect by either party to enforce any of the provisions of this Agreement is not a waiver of that party's rights and does not affect the validity of this Agreement nor prejudice that party's rights; any waiver by a party of its rights under this Agreement does not operate as a waiver in respect of any subsequent rights.
- 18.5 If any provision of this Agreement is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Agreement shall be unaffected.
- 18.6 The Customer shall not without the prior written consent of Encompass assign, transfer, charge, dispose of, deal with or sub-contract its rights or obligations under this Agreement.
- 18.7 This Agreement, and any non-contractual obligations arising in connection with this Agreement, shall be governed by and construed in accordance with English law.