

End User Terms and Conditions

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY. THIS END USER AGREEMENT ("THE AGREEMENT") IS AN AGREEMENT BETWEEN IDAPT LLP (REGISTRATION NUMBER OC353796) WHOSE REGISTERED OFFICE IS AT THE BYRE, LIMES FARMYARD, LUCKINGTON ROAD, ACTON TURVILLE GL9 1HG ("THE PROVIDER") AND YOU (WHICH FOR THE AVOIDANCE OF DOUBT INCLUDES YOU AS AN INDIVIDUAL OR ON BEHALF OF THE SUBSCRIBER NAMED IN THE WELCOME LETTER SENT TO YOU BEFORE THE DATE OF SUBSCRIPTION ("THE WELCOME LETTER") ("THE SUBSCRIBER").

BY TICKING THE BOX "I AGREE TO THE TERMS AND CONDITIONS" AND CLICKING THE "SUBMIT" BUTTON ON THE REGISTRATION PAGE OF THE WEBSITE (www.idapt-planning.co.uk) ("THE WEBSITE") OR BY USING THE WEBSITE, YOU AGREE TO THE TERMS OF THIS AGREEMENT.

IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT THEN DO NOT CLICK "SUBMIT" AND DO NOT USE THE WEBSITE.

AGREEMENT

1 Definitions and interpretation

1.1 In this Agreement (except where the context otherwise requires), the following words and expressions shall have the following meanings:

Additional User Letter: a letter sent to the Head Account Holder when he increases the number of Total Individual Seat Licences in accordance with Clause 6;

Business Day: any day other than a Saturday, Sunday or any day which is a public holiday in England;

Commencement Date: the commencement date specified in the Welcome Letter;

Data: all the information which the Subscriber (i) is permitted to retrieve from the Database under this Agreement; (ii) any plans produced by the Subscriber using the Drawing Programme; and (iii) any specification generated by the Subscriber using the Drawing Programme;

Database: the Provider's on-line computer database service of specialist equipment and furniture for those people requiring specialised home adaptations;

Drawing Programme: the drawing programme that allows the Subscriber to create scaled floor and rooms plans for use in accordance with the terms of this Agreement;

Head Account: means the Head Account Holder and the Registered Users first granted access to the Service in accordance with the terms of this Agreement and the Welcome Letter;

Head Account Holder: means the person specified in the Welcome Letter as the head account holder;

Initial Period: the initial period specified in the Welcome Letter;

Initial Subscription Charge: the charge payable by the Subscriber for access to the Service for the Initial Period as specified in the Welcome Letter;

Personal Area: a defined area of the Website where Registered Users can save Data;

Registered Users: means any person permitted access to the Service by the Head Account Holder in accordance with the terms of this Agreement;

Renewal Date: means the renewal date specified in the Welcome Letter and any date that falls the next day after the last day of any Subscription Period;

Service: the provision of access to (i) the Registered User section of the Website; (ii) the files within the Database; (iii) the Drawing Programme; and (iv) the Personal Area;

Subscription Charges: the charge payable by the Subscriber for access to the Service at the Provider's rates current from time to time;

Subscription Period: any additional subscription period of the same length as the Initial Period or as otherwise agreed in writing between the parties;

Subscription Year: any period during the term of this Agreement for the same length as the Subscription Period;

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Total Individual Seat Licences: the maximum number of persons (which in this context means a natural person) selected by the Subscriber and specified in the Welcome Letter (or as varied from time to time by agreement in writing between the Provider and the Subscriber) who may each access the Service;

Term: the term of this Agreement.

- 1.2 In this Agreement (unless the context requires otherwise):
- 1.2.1 the singular shall include the plural and vice versa;
 - 1.2.2 a reference to one gender shall include all other genders;
 - 1.2.3 a reference to a statute or a statutory provision is a reference to it as it is in force for the time being, taking into account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it;
 - 1.2.4 any reference to “in writing” or “written” shall include written or produced by any legible and non-transitory substitute for writing (including in electronic form) or partly in one manner and partly in another;
 - 1.2.5 any reference to “persons” includes a natural person, partnership, company, corporation or other body corporate, wherever and however incorporated or established;
 - 1.2.6 any reference to a “company” shall be construed so as to include any company, corporation or other body corporate, whenever and however incorporated or established;
 - 1.2.7 any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
 - 1.2.8 words and expressions that are defined in the Copyright, Designs and Patents Act 1988 shall bear the same meanings in this Agreement;
 - 1.2.9 references in this Agreement to Clauses and Schedules are to clauses of and schedules to this Agreement except where otherwise expressly stated;
 - 1.2.10 headings are used in this Agreement for the convenience of the parties only and shall not be incorporated into this Agreement and shall not be deemed to be any indication of the meaning of the clauses or schedules to which they relate.

2. Supply of Service

- 2.1 The Provider agrees to provide the Service to the Subscriber and the Subscriber agrees to subscribe to the Service upon and subject to the terms of this Agreement.
- 2.2 The Provider will permit the Subscriber to allow the Head Account Holder and its Registered Users to access the Service upon and subject to the terms of this Agreement.
- 2.3 The number of log-in usernames and passwords issued by the Head Account Holder (which for the avoidance of doubt includes the user name and password of the Head Account Holder) issued to Registered Users must not exceed the number of Total Individual Seat Licences.
- 2.4 The Head Account Holder shall issue log-in usernames and passwords to each Registered User and use all reasonable endeavours to ensure that each of the Registered Users do not divulge their log-in details to any third parties or share the use of usernames and passwords.
- 2.5 The Head Account Holder shall keep an accurate record of Registered Users at his primary place of business and shall permit the Provider to inspect them on reasonable notice during any Business Day in order to verify that the number of Total Individual Seat Licences has not been exceeded.
- 2.6 Except as provided in this Agreement, the Head Account Holder shall not divulge any log-in details to any third party and will immediately notify the Provider if he becomes aware of the Service been accessed by any other person than a bona fide Registered User.
- 2.7 The Head Account Holder may only be changed or substituted with the express permission of the Provider.

3. Use of the Service and the Data

- 3.1 The Provider grants to the Subscriber a non-exclusive, non-transferable Agreement to use the Data and the Drawing Programme as part of the Service in accordance with this Agreement.
- 3.2 The Subscriber may make copies of the Data as follows:

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- 3.2.1 by temporarily displaying the Data on a computer terminal;
 - 3.2.2 by making a copy of the Data on paper; and
 - 3.2.3 by downloading, emailing and storing by electronic means a copy of the Data on the Subscriber's own equipment.
- 3.3 The Subscriber may only use copies of the Data in accordance with Clause 3.2 for the purposes of internal research by it and its employees or for the purposes of discussing possible home adaptations with a client.
- 3.4 The Subscriber shall not redistribute or resell the Service or the Data without the prior written consent of the Provider.
- 3.5 The Subscriber acknowledges that the way in which it interprets or uses the Data is dependant upon the exercise of its own skill and judgment.

4. Term

- 4.1 The term of this Agreement will begin (or be deemed to begin) on the Commencement Date and will continue for the Initial Period.
- 4.2 This Agreement will continue in force after the expiry of the Initial Period unless and until the Provider or the Subscriber gives to the other not less than 30 days' written notice expiring on the last day of the Initial Period or the last day of any Subscription Period following the end of the Initial Period.
- 4.3 This Agreement is also subject to termination in accordance with Clause 11.

5. Subscription Charges

- 5.1 The Initial Subscription Charge shall be payable on the terms of the invoice issued with the Welcome Letter.
- 5.2 The Subscription Charge for each Subscription Period shall be determined in accordance with the Provider's price list current from time to time. The current Subscription Charges are as set out in the Welcome Letter and further copies of the price list are available on request.
- 5.3 The Subscription Charge for any additional Subscription Period shall be payable within 30 days of the Renewal Date or on the terms of any invoice issued for any additional Subscription Period.
- 5.4 The Subscription Charges do not include VAT which shall be payable in addition by the Subscriber in the manner and rate from time to time prescribed by law, subject to delivery by the Provider of a valid VAT invoice.
- 5.5 All sums payable under this Agreement are due within 30 days after the date of delivery of a correct invoice. If any sum payable to the Provider by the Subscriber is not paid by the due date, the Provider may suspend performance of its obligations and all rights granted to the Subscriber in this Agreement and/or charge interest on any sums due (after as well as before judgement) from the last date for payment of that sum to the date of actual payment at the rate established in the Late Payment of Commercial Debts (Interest) Act 1998, whether or not the Act would otherwise apply to the parties.
- 5.6 The Provider reserves the right to increase its Subscription Charges for the following Subscription Year by giving the Subscriber 30 days' notice in writing (which for the avoidance of doubt includes by electronic mail or posting an update on the Website) expiring on the last day of the current Subscription Year and any such price increase shall take effect on the next day.
- 5.7 The Subscriber may elect to terminate this Agreement in accordance with Clause 11 if it no longer wishes to subscribe to the Service in light of any such price increase and the Subscriber shall be deemed to have accepted the price increase if it does not exercise such right of termination.
- 5.8 No refund of any Subscription Charge paid in advance will be made to the Subscriber in any circumstances save in accordance with Clause 6.5.
- 5.9 No payment shall be deemed to have been received until the Provider has received cleared funds.
- 5.10 The Provider accepts no responsibility for the loss of any of the Subscriber's work in progress where any invoice is paid after the end of the Term, or where the Term is not extended.
- 5.11 Where Fees are paid after the end of the Term and the Subscriber wishes to be reconnected to the Website, the Provider shall be entitled to charge a reconnection fee, to include an amount to cover the cost of retrieving any files lost due to the termination of the right to access the Website.

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6. Increasing the number of Total Individual Seat Licences

- 6.1 The Subscriber may increase the number of Total Individual Seat Licences at any time during the Term and each additional Registered User shall be allocated a username and password by the Head Account Holder and will use the Service in accordance with the terms of this Agreement.
- 6.2 The Subscription Charge for increasing the number of Total Individual Seat Licences shall be determined in accordance with the Provider's price list current from time to time (calculated by reference to the number of Total Individual Seat Licences) and the subscription charge for increasing the number of Total Individual Seat Licences shall be payable on the terms of the invoice issued with the Additional User Letter.
- 6.3 The term of the licence for each new Registered User provided by increasing the number of Total Individual Seat Licences will begin (or will be deemed to begin) on the date set out in the Additional User Letter and will continue for the residue of the term of the Head Account.
- 6.4 On any Renewal Date any new Registered Users added during the previous Subscription Year by increasing the Total Individual Seat Licences will (i) automatically renew on the same terms and for the same period as the Head Account; and (ii) will continue to renew on the same terms and for the same period as the Head Account on any subsequent renewals.
- 6.5 If an additional Registered User has been added during the previous Subscription Year by increasing the number of Total Individual Seat Licences and that licence automatically renews in accordance with Clause 6.4, then the Subscriber is entitled to a refund on a pro rata basis of any unused proportion of the additional Registered User's fee by way of credit against the Head Account's subscription costs (the amount of this refund shall be determined by the Provider in its absolute discretion).
- 6.6 If the Head Account is terminated on the renewal date then the Subscriber shall not be entitled to a refund for any unused proportion of any Registered User's, added during the previous Subscription Year by increasing the number of Total Individual Seat Licences, licence fee and any additional Registered User's shall automatically terminate on the same day as the Head Account is terminated.

7. Agreed Delivery Method

The Subscriber will be responsible for the provisions of the necessary telecom communications lines and equipment to enable the Subscriber to receive the Service.

8. Availability of Service

- 8.1 The Provider will use its reasonable endeavours to keep the Service in operation during the term of this Agreement. However, the Provider's obligations will be suspended if and for so long as any circumstances occur which prevent it from delivering the Service.
- 8.2 The Provider reserves the right to alter the contents or manner of presentation of the Service and to remove any file or any of its contents within the Service either temporarily or permanently.
- 8.3 The Subscriber may terminate this Agreement in accordance with the provisions of Clause 11.2 in the case of a prolonged interruption of the Service and for this purpose 'prolonged interruption' means an interruption of more than 90 days in the continuous availability of the Service.

9. Intellectual property rights

- 9.1 The copyright, database rights and all other right, title and interest in all literary works comprising the Database is owned by the Provider or by its information suppliers.
- 9.2 The Provider will retain all copyright, database right and all other right, title and interest in the Website worldwide.
- 9.3 The Subscriber acknowledges that its permission to use those copyright works is limited to the rights expressly conferred by this Agreement.
- 9.4 The Subscriber agrees to keep confidential any information (other than the Data) supplied to it or its staff or officers by the Provider and expressly designated as 'confidential'. This provision shall survive termination of this Agreement.

10. Liability and indemnity

The Subscriber acknowledges to the Provider that the Provider makes no express or implied warranties as to the merchantability or fitness for a particular purpose of the Service or the Data.

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11 Termination

- 11.1 The Provider may terminate this Agreement by 5 Business Days' written notice to the Subscriber if the Subscriber commits any material breach of any of the terms of this Agreement and (if capable of remedy) fails to remedy such breach within a period of 10 Business Days from the date of receipt of written notice from the Provider requiring the Subscriber to remedy the breach.
- 11.2 The Subscriber may terminate this Agreement by giving 20 Business Days' written notice to the Provider if there is a 'prolonged interruption' (as defined in Clause 8.3) in the Service.
- 11.3 The Subscriber may terminate this Agreement by giving 30 days' written notice to the Provider expiring on the last day of any Subscription Year if the Provider has given notice of a price increase to apply to the following Subscription Year which the Subscriber does not wish to accept.
- 11.4 The Provider may terminate this Agreement forthwith by notice in writing to the Subscriber if the Subscriber:
- 11.4.1 goes into liquidation (other than a solvent voluntary liquidation for the purposes of an amalgamation or reconstruction);
 - 11.4.2 is unable to pay its debts within the meaning of the Insolvency Act 1986 Section 123;
 - 11.4.3 has a receiver or administrator or an administrative receiver appointed or administration order made over or in respect of its assets which is not discharged within 14 days; or
 - 11.4.4 enters into or proposes to enter into any voluntary arrangements within the meaning of the Insolvency Act 1986.
- 11.5 The Provider may terminate this Agreement at any time by giving to the Subscriber not less than 20 Business Days' notice in writing.
- 11.6 The Subscriber must return all copies of the Data within 20 Business Days of the date on which termination takes effect.
- 11.7 Termination of this Agreement shall not affect any obligations by either party to the other which are outstanding as at the effective date of termination nor any of the provisions of this Agreement which are expressed to survive termination.

12 Force majeure

- 12.1 If either party is prevented from fulfilling its obligations under this Agreement by reason of any supervening event beyond its control (including but not limited to war, national emergency, flood, earthquake, strike or lockout (other than a strike or lockout induced by the party so incapacitated) or illness) the party unable to fulfil its obligations ('the incapacitated party') shall immediately give notice of this to the other party and shall do everything in its power to resume full performance of its obligations as soon as possible.
- 12.2 Subject to compliance with the requirements of Clause 12.1 the incapacitated party shall not be deemed to be in breach of its obligations under this Agreement during the period of incapacity and the other party shall continue to perform its obligations under this Agreement save only in so far as they are dependent on the prior performance by the incapacitated party of obligations which it cannot perform during the period of incapacity.
- 12.3 If the period of incapacity exceeds 6 months then this Agreement shall automatically terminate unless the parties first agree otherwise in writing.

13 Whole agreement

This Agreement contains the whole agreement between the parties and supersedes any prior written or oral agreement between them in relation to its subject matter and the parties confirm that they have not entered into this Agreement upon the basis of any representations that are not expressly incorporated into this Agreement. No oral explanation or oral information given by any party shall alter or affect the interpretation of this Agreement.

14 Reservation of rights

All rights not specifically and expressly granted to the Subscriber by this Agreement are reserved to the Provider.

15 Joint and several

All agreements on the part of either of the parties which comprises more than one person or entity shall be joint and several.

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16 Proper law and jurisdiction

This Agreement shall be governed by English law in every particular including formation and interpretation and shall be deemed to have been made in England and the parties agree to submit to the jurisdiction of the English courts.

17 Notices

17.1 Any notice consent or the like (in this clause referred to generally as 'notice') required or permitted to be given under this Agreement shall not be binding unless in writing and may be given personally or sent to the party to be notified by pre-paid first class post or by electronic mail or facsimile transmission at its address as set out above or as otherwise notified in accordance with this Clause 17.1.

17.2 Notice given personally shall be deemed given at the time of its delivery.

17.3 Notice sent by post in accordance with this Clause 17 shall be deemed given at the commencement of business of the recipient on the second business day following its posting.

17.4 Notice sent by electronic mail or facsimile transmission in accordance with this clause shall be deemed given at the time of its actual transmission provided that the sender does not receive any indication that the electronic mail message or facsimile transmission has not been successfully transmitted to the intended recipient.

18 Waiver

The failure by either party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.

19 Severance

In the event that any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable or indications of this are received by either of the parties from any relevant competent authority the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality or at the discretion of the Provider it may be severed from this Agreement and in either event the remaining provisions of this Agreement shall remain in full force and effect.

20 Survival of terms

The provisions of Clause 9 and for payment of and accounting in respect of other moneys due to the Provider under the terms of this Agreement shall survive the termination or expiry of this Agreement.

21 VAT

All sums payable to the Provider under this Agreement are exclusive of VAT which shall where applicable be paid in addition at the rate in force at the due time for payment subject to the Provider supplying a VAT invoice to the Subscriber.

22 Rights and remedies cumulative

All rights and remedies available to the parties under the terms of this Agreement and under the general law shall be cumulative and no exercise by either of the parties of any such right or remedy shall restrict or prejudice the exercise of any other right or remedy granted by this Agreement or otherwise available to it.

23 Assignment

23.1 This Agreement shall be personal to the Subscriber.

23.2 Subject to the Provider giving notice to the Subscriber it may assign its rights under this Agreement any third party, company or limited liability partnership.

24 No partnership

Nothing in this Agreement shall be deemed to constitute a partnership between the parties nor the relationship of employer and employee under a contract of service nor the relationship of principal and agent.

25 Third parties

This Agreement does not create any right enforceable by any person not a party to it. For the avoidance of doubt the agreement does not create any rights enforceable to any successor or assignee of the Subscriber.

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