

SPUD CONSTRUCT CUSTOMER TERMS AND CONDITIONS

1. INFORMATION ABOUT THESE TERMS

These “**Terms**” are the terms on which the Platform and Services shall be made available to you. By selecting “**Agree**” to these Terms and thereby being granted access to the Platform and, if applicable, the Services, you agree to be bound by these Terms, so please read them carefully and if necessary print out and save a copy of them. If you do not accept these Terms, you must not select “**Agree**” and you agree that you will not be permitted to use the Platform and/or the Services.

In these Terms “**you**” means the customer or its representative accessing the Platform or using the Services and “**SPUD**” or “**we**” or “**us**” means SPUD Construct Ltd of 4-6 Spicer Street, St Albans, Hertfordshire, AL3 4PQ.

2. DEFINITIONS

“**Data Protection Legislation**” means all applicable laws and regulations relating to the processing of Personal Data and privacy including the EU Data Protection Directive (95/46/EC), the Electronic Communications Data Protection Directive (2002/58/EC) and the EU’s General Data Protection Regulation (2016/679/EC), including all law and regulations implementing or made under them and any amendment or re-enactment of them;

“**Personal Data**” means personal data (as defined in the Data Protection Legislation) which we are provided with, obtain, generate or create in connection with the performance of our obligations specifically for you under this Agreement;

“**Processing**” shall have the meaning given to that term in the Data Protection Legislation and “process” and “processed” shall have a corresponding meaning;

“**Personal Data Breach**” means the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed;

“**Platform**” means the website at www.spudnow.co.uk and associated iOS or Android apps made available by SPUD from time to time;

“**Regulatory Bodies**” means those government departments and regulatory, statutory and other bodies, entities and committees which, whether under statute, rule, regulation, code of practice or otherwise, are entitled to regulate, investigate or influence the matters relating to the security of data, personal data and privacy;

“**Services**” has the meaning given at paragraph 4 below.

3. CHANGES TO THESE TERMS

We are constantly looking for new ways to improve the Platform and the Services we provide to you. We therefore reserve the right to amend these Terms at any time at our sole discretion. All such changes will take effect 5 calendar days after they were initially posted on the Platform (or as the case may be, via associated iOS or Android apps made available exclusively by us from time to time) and you will be deemed to have accepted any such changes by selecting “**Agree**” to the revised terms and/or through your continued use of the Platform and/or the Services from such time.

4. DESCRIPTION OF THE SERVICES

We shall enable you to access the functionality of the Platform made available from time to time by us and receive a reasonable level of technical support from us in relation to your use of the Platform (together the “**Services**”).

5. THIRD PARTY SERVICES/PRODUCTS

The Services may include the ability to order goods and/or services from third party suppliers (“**Suppliers**”) who will be provided with your information through the Platform in order that the Suppliers can provide you with relevant product/service information and potentially enter into contracts with you. The Platform will also make available terms and conditions which shall apply between you and the relevant Supplier in respect of any purchase of goods or services that you make from that Supplier. The Platform shall also describe processes for submitting orders to Suppliers, for acceptance of those orders by Suppliers (as they see fit in their discretion) and for fulfillment and delivery of those orders.

We are neither acting as agent for Suppliers nor selling, reselling, renting or licensing Suppliers’ listed products and/or services. At no point, nor under any circumstances, are we responsible for the content, suitability or fitness for purpose of any listed products or services provided by any Supplier through the Platform and we shall not have possession or control of any Supplier product at any time. We will not be party to any transaction or contract with any Supplier that you may enter into for the purchase of listed products or services on the Platform and we have no liability in connection with any such contract, product or service. You agree that you will contact the Supplier or manufacturer of the products directly in relation to questions, complaints or disputes you have in respect of any products and you will not involve us in any dispute between you and any third party.

6. USER ACCOUNT AND PASSWORD

To use the Platform and/or Services you will receive a username, password and account designation. You are responsible for maintaining the confidentiality of the password and account, for ensuring that it is not used by anyone other than people authorised by you, and for all activities that occur under your account. You and not SPUD will be liable should your password or account be used by someone else. You agree that you will not (and that you will procure that your employees shall not) use the Services and/or the Platform until you have completed the application process and paid any fees that are initially due.

7. FEES

You agree that you will pay any fees as relevant with any Supplier pursuant to the terms and conditions that you sign with such Suppliers. Fees for your use of the Platform will be communicated to you and agreed via the Platform and may be affected by your intended use of the Platform (including, if applicable, any iOS or Android applications made available by SPUD from time to time). In the event that you fail to make a Platform fee payment, we reserve the right to suspend your access to the Platform and/or the Services after 14 days late payment. We reserve the right to amend the Platform fee from time to time on 30 days’ notice to you by email or by posting the changes on the Customer fees webpage. You may terminate these Terms (and your use of the Platform and Services) by notice in writing to us no later than 7 days before any such amendment to the monthly fee comes into effect. To the extent that these Terms are terminated by the Customer within 3 months of being entered into, a break fee of equivalent to one project fee for three months will become payable to SPUD. Invoice will be raised at the end of the month, payment is due 30 days from the date of the invoice. Invoice is calculated on a 30 day rolling contract per project, for each project active in the 30 day period you will be charged £100. Additional fees will be charged for the purchase of the Morpho Tablet 2 complete with stand of £1000 if a sim card is required a monthly fee of £10 per month is charged.

8. USER CONDUCT

You agree to not (and procure that any of your representatives or workers that use the Platform shall not) access the Platform and/or use the Services to: (a) interfere with or disrupt the Platform or Services or servers or networks connected to the Platform and/or the Services, or disobey any requirements, procedures, policies or regulations of networks connected to the Platform and/or Services; (b) intentionally or unintentionally violate any applicable law or regulation; or (c) reproduce, duplicate, copy, sell, resell or exploit for any commercial purposes, any aspect of the Platform and/or the Services.

You agree not to (and procure that any of your representatives or workers shall not) upload, email or otherwise transmit: (a) any content that is false, inaccurate, unlawful, harmful, threatening, abusive, harassing, defamatory, vulgar, obscene, invasive of another's privacy, hateful, or that otherwise degrades or intimidates an individual or group of individuals on the basis of religion, gender, sexual orientation, race, ethnicity, age or disability; (b) any content that infringes any patent, trademark, trade secret, copyright or other proprietary rights of any party; (c) any unsolicited or unauthorised advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation; or (d) any material that contains software viruses or any other computer code, files or programs designed to interrupt, damage, destroy or limit the functionality of any computer software or hardware or telecommunications equipment.

Subject to clause 12 of these Terms, we shall have no responsibility (nor accept any liability for) any content, transmitted via email or otherwise, that is uploaded to the Platform (or any iOS or Android app that may be made available via the Platform) by you, your representatives or workers in connection with your use of the Platform or the Services.

9. RESPONSIBILITY FOR CONTENT

The Platform may provide product descriptions and other general information that is not tailored specifically to you (the "**Platform Content**"). Our inclusion of any Platform Content is for informational purposes only and may be provided via the direct input of Suppliers (without verification by us) and does not imply any endorsement on our behalf of any products, Suppliers or other products and/or services offered by such Suppliers or yourself. Whilst we shall use reasonable endeavours to correct any errors or omissions of Platform Content as soon as practicable once they have been brought to our attention, we do not warrant that the Platform Content will be free from errors or omissions and we accept no liability for any inaccuracies or mistakes in any Platform Content.

Additionally, the Platform provides you with the ability to generate overview statistics reports (such as labour reports, document reports and customer order reports). Given that the content of such reports will be based on information and data provided by you (or your representatives or workers) and/or a Supplier in relation to project data displayed via the Platform, we do not warrant that any such reports will be entirely free from errors or omissions and we accept no liability for any inaccuracies or mistakes contained therein.

10. ACCESS TO AND USE OF PLATFORM AND SERVICES

Whilst we will try to ensure that the Platform and the Services will be available on an uninterrupted and fully operational basis, we cannot guarantee this. Access to the Platform and/or the Services may be suspended temporarily and without notice in the case of system failure, maintenance or repair or for reasons reasonably beyond our control.

Some Platform functionalities such as the worker tracking functionalities require geo-location data. Additionally, some of the Platform functionalities regarding workers more generally shall necessarily require the processing of the Personal Data of your workers under relevant data protection laws. You must ensure that such data is only collected where legally permissible and in a legally compliant manner. It is your sole responsibility to inform your workers through the issuance of privacy notices that comply with applicable data protection laws that their

Personal Data may be passed on to us (and potentially Suppliers) for the purposes of use of the Platform and/or the Services.

You remain solely responsible for:

- the care, management and monitoring of your workers or other authorised users of the Platform and the subsequent use of any reports generated via the Platform in relation to such persons;
- verifying the accuracy of all documentation or other information uploaded on to or generated by the Platform by or for you;
- providing accurate and appropriate communication with your authorised users regarding the Platform and/or the Services from time to time; and
- verifying the accuracy of all cost estimates submitted on the Platform as well as the accuracy of any safety alerts or project communications provided to workers or end-users via the Platform and/or the Services.

11. CHANGES TO THE PLATFORM AND SERVICES

We reserve the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Platform or the Services (or any part thereof) or to launch new services, with or without notice. You agree that we shall not be liable to you or to any third party for any modification, suspension or discontinuance of the Platform or Services.

12. DATA PROTECTION

We take the privacy rights of users of the Platform and the Services very seriously and are committed to protecting and respecting your privacy and that of any end-user.

For the purposes of these Terms, you agree that in respect of Personal Data you shall act as a data controller and we shall act as a data processor within the meaning of the Data Protection Legislation. We shall:

- A. carry out Personal Data processing activities necessary for the performance of the Services on your behalf and in processing such Personal Data act only in accordance with your written instructions except to the extent that a legal requirement prevents us from complying with such written instructions or if, in our opinion, your written instructions infringe the Data Protection Legislation (each a “**Conflict**”). In the event of a Conflict, we shall not be obliged under any circumstances to carry out the data processing affected by the Conflict and shall, unless such legal requirement prohibits us from doing so, inform you of the relevant legal requirement before carrying out the affected processing activities;
- B. take reasonable and appropriate technical and organisational measures against unauthorised or unlawful processing of the Personal Data processed as a result of the Services and against accidental loss or destruction of, or damage to, the Personal Data, including such measures as are required by Article 32 of the EU’s General Data Protection Regulation (2016/679/EC) as amended, extended, re-enacted or replaced from time to time;
- C. ensure that any of our employees, officers, independent contractors, agency workers and agents that have access to the Personal Data have been informed of the confidential nature of such Personal Data and that they agree in writing to be bound by a duty of confidentiality in respect of such Personal Data; and
- D. not disclose any of the Personal Data to any third party, nor allow any third party to process such Personal Data on our behalf, unless you have given prior consent

(which, for the avoidance of doubt, may be given by virtue of our rights and obligations under these Terms and is hereby given in respect of hosting on the Microsoft Azure platform).

Where we allow a third party to process Personal Data on our behalf, we shall:

- E. use reasonable endeavours to ensure that the third party is bound by equivalent data protection obligations that we are subject to under these Terms;
- F. unless explicitly stated otherwise, any consent provided by you shall be deemed to be a general consent that is not limited to a specific third party. We shall inform you of any intended changes concerning the addition or replacement of a third party processing Personal Data on our behalf pursuant to any general consent provided by you;
- G. transfer the Personal Data processed as a result of the Services outside the European Economic Area (“**EEA**”) only on your written instructions except to the extent that a Conflict prevents us from complying with such written instructions (in which case we shall comply with paragraph 12(A) above). You agree that we shall be entitled to transfer the Personal Data processed as a result of the Services outside the EEA where:
 - the recipient has entered into an agreement with you (or, in respect of sub-processor, an agreement with us to which you are a third party beneficiary) containing the standard contractual clauses for the transfer of personal data from data controllers in the EU to data processors in jurisdictions outside the European Economic Area, adopted by the European Commission pursuant to Decision 2010/87/EU, as amended or replaced from time to time; or
 - the recipient is located in a country in respect of which the European Commission has issued a finding of the adequacy of the protection of personal data; or
 - we are able to demonstrate to your reasonable satisfaction that the transfer otherwise satisfies the requirements of the Data Protection Legislation;
- H. provide you with reasonable cooperation and assistance (taking into account the nature of the processing undertaken by the Services and the information available to us at the time) in connection with your compliance with:
 - Articles 32 – 36 (inclusive) of the EU’s General Data Protection Regulation (2016/679/EC); and
 - your obligations to respond to the exercise of data subject rights under the Data Protection Legislation;
- I. make available information and permit not more than once in each calendar year (unless there is a material breach of these Terms or a Regulatory Body otherwise requires additional audits to be undertaken), you or a third party auditor appointed by you to audit and inspect our data processing records, in each case only to the extent that the same is reasonably necessary in order to establish whether we have complied with our obligations under these Terms and subject to you providing reasonable prior written notice of any such audit or inspection and agreeing to confidentiality obligations reasonably satisfactory to us and any of our subcontractors; and
- J. if there is a Personal Data Breach, notify you without undue delay of becoming aware of the breach and provide you with reasonable cooperation and assistance (taking into account the nature of the processing undertaken by us and the information available to us at the time) in making any mandatory notifications to Regulatory Bodies and/or affected data subjects in connection with the Personal Data Breach.

Upon expiry or termination of these Terms for any reason, we shall (at your option, to be exercised reasonably) deliver all records of the Personal Data processed by the Services to you or irretrievably delete such Personal Data (except to the extent that we are required by law to retain copies of such Personal Data).

13. TERMINATION

These Terms shall automatically continue until they are terminated by either you or us by serving not less than 30 days written notice at any time, subject in your case to payment of charges for any pre-agreed minimum committed term.

Without prejudice to any other rights that SPUD or you may be entitled to under these Terms, either SPUD or you may terminate these Terms without liability to the other if:

- the other party commits a material breach of any provision of these Terms and (if such a breach is remediable) fails to remedy that breach within five (5) days of the date of service of written notice on the breaching party by the non-breaching party not specifying the breach and requiring it to be remedied;
- the other party repeatedly breaches any provision of these Terms in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give practical effect to these Terms;
- the other party is the subject of a petition, order, or resolution in connection with winding up (whether solvent or insolvent), or ceases or threatens to cease to carry on all or a material part of its business, except for the purpose of and followed by a bona-fide reconstruction, amalgamation, re-organisation, merger or consolidation;
- the other party begins negotiations for, takes any proceedings concerning, proposes or makes any agreement for the deferral, rescheduling or other readjustment (or proposes or makes a general assignment or an arrangement or composition with or for the benefit of some or all of its creditors) or all of (or all of a particular type of) its debts, or a moratorium is agreed or declared in respect of or affecting all or a material part of (or of a particular type of) the debts of the other party;
- the other party is the subject of a petition for an administration order or an application for an administration order, or an administrator is appointed to the other party or notice of intention to appoint an administrator is given, or any other step is taken by any person with a view to the administration of the other party under the Insolvency Act 1986 including the passing of any resolution by the directors or shareholders of the other party approving the presentation of any such petition, the making of any such application or appointment or the giving of any such notice;
- the other party is the subject of any step to enforce security over or a distress, execution or other similar process is levied or served against the whole or a substantial part of the assets or undertaking of the other party, including the appointment of a receiver, administrative receiver, manager or similar officer to enforce that security in respect of all or any part of the property or undertaking of the other party; or
- the other party suffers or is subject to any equivalent event, circumstance or procedure to those set out above in this clause 13 in any other jurisdiction.

14. LINKS

We may provide, or third parties (including Suppliers) may provide, links or advertising to other internet sites or resources. Because we have no control over the identity or content of such sites and resources, you acknowledge and agree that we are not responsible for the availability of such external sites or resources, and do not endorse and are not responsible or

liable for any content, advertising, products, or other materials on or available from such sites or resources. If you or one of your representatives or workers follows a link to any of these websites, please note that these websites will retain their own terms and privacy policies and that we do not accept any responsibility, obligations or liabilities thereunder. You acknowledge and agree that we shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with the use of or reliance on any such content, goods or services available on or through any such link, site or resource. You acknowledge that we will not be party to any transaction or contract with a third party that you may enter into and you agree that you will not involve us in any dispute between you and any third party.

15. IPR

Your use of the Platform and/or the Services and its contents grants no rights to you or your representatives or workers in relation to our intellectual property rights including, without limitation, trademarks, logos, graphics, photographs, animations, videos and text or the intellectual property of third parties in the Platform and its contents.

You may not copy, reproduce, republish, download, post, broadcast, record, transmit, commercially exploit, edit, communicate to the public or distribute in any way the Services, web pages, materials or other content accessed, including without limitation the Platform Content or the computer codes of elements comprising the Platform other than for your own internal business use.

Through and in respect of the use of the Platform and/or the Services by you and our other customers and suppliers, we will generate data (from which you or any of our other customers can not be identified) in respect of use of the Platform and associated projects. We will own all intellectual property rights in that data and may use it as we see fit without restriction, obligation or liability to you or any other customers.

16. INDEMNITY

You agree to fully indemnify us and our subsidiaries, affiliates, officers, agents and other partners, and employees, from any claim or damages (including any legal fees in relation to such claim or damages), made by any third party in respect of any matter in relation to or arising from your use of the Platform and/or the Services including any breach or suspected breach of these Terms or your violation of any law or the rights of any third party.

17. OUR LEGAL OBLIGATIONS AND LIMITS ON LIABILITY

Nothing in these Terms shall exclude or limit our liability for fraudulent misrepresentation or for death or personal injury resulting from our negligence or the negligence by us, our employees or agents.

We do not accept any liability for damage to your computer system, mobile device (including tablets) or loss of data that results from your use of the Platform and we cannot guarantee that any files that you download are free from viruses, contamination, malware or destructive features.

We shall only be liable for losses you suffer as a result of us breaching these Terms if the losses are a direct and foreseeable consequence of us breaching these Terms. Losses are unforeseeable where they could not be contemplated by you and us at the time the Terms were entered into by you. We are not responsible for any indirect losses you may suffer (which shall be deemed to include loss or profits and loss of opportunity). If we are found to be liable, our aggregate liability to you or to any third party under or in connection with these Terms is limited to the total fees you have paid to us in the 12 months prior to the event giving rise to the liability.

The Platform is powered by Microsoft Azure software. Our obligations and liability shall be limited to reflect the full extent of Microsoft's obligations and liability for the Microsoft Azure service. We accept no liability to the extent that the Platform and/or the Services suffers from a period of unavailability as a result of an act, omission or failure of any software, hardware or other technical equipment used by Microsoft Azure.

18. NOTICES

Notices to you may be made via either email or regular mail.

19. TRADEMARK INFORMATION

"**SPUD**" and other SPUD logos and product and service names are trademarks of SPUD Construct Ltd (the "**SPUD Marks**"). Without our prior permission, you agree not to display or use in any manner, commercial or otherwise, the SPUD Marks.

20. FORCE MAJEURE

SPUD shall not be liable for any failure to provide access to the Platform and/or the Services where it is hindered or prevented from the provision of the Services by any cause outside its reasonable control, including without limitation by lightning, fire, flood, extremely severe weather, strike, lock-out, labour dispute, act of God, war, riot, civil commotion, malicious damage, failure of any telecommunications or computer system, compliance with any law, accident (or by any damage caused by any such events).

21. GENERAL TERMS

Entire Agreement

These Terms and any additional terms and conditions referred to in them constitute the entire agreement between you and us and govern your use of the Platform and the Services, superseding any prior agreements between you and us.

Governing Law and Jurisdiction

These Terms (and any contractual or non-contractual dispute under or in connection with these Terms) shall be governed and construed in accordance with English law. In the event of any dispute arises between you and us in respect of any contractual or non-contractual issue under or in connection with these Terms, the courts of England and Wales shall have exclusive jurisdiction.

Waiver

Any failure by us to exercise or enforce any right or provision of the Terms shall not constitute a waiver of such right or provision.

Severance

If any provision of the Terms is found by a court of competent jurisdiction to be invalid, SPUD and you nevertheless agree that the court should endeavour to give effect to the parties' intentions as reflected in the provision, and the other provisions of the Terms continue to apply.

Assignment

Neither you nor we may assign or transfer any rights or obligations under these Terms without the prior written consent of the other party, except that we shall be entitled to assign or transfer any or all of our rights and obligations (without your prior consent) to any of our affiliated companies or to a purchaser of us.

Contact Us

If you have any questions regarding these Terms or your use of the Platform and/or the Services, please contact paul.downey@spudnow.co.uk.

Agreement to Terms

I/We confirm that I have fully read and understood all the rights and obligations set out within these Terms and that by selecting "**Agree**" below, I/we agree to be bound by these Terms for the purposes of my/our use of the Platform and/or the Services.