

Terms of Service

Meisterplan USA Software as a Service Terms and Conditions

Last Updated: November 7, 2023

These Meisterplan Software as a Service Terms and Conditions (hereinafter referred to as **"Terms"**) govern the relationship between Meisterplan USA, Inc., 800 5th Avenue, Suite 101-800, Seattle, WA 98104, USA (**"Supplier"**) and the company/organization (**"Customer"**) purchasing a subscription to use the Meisterplan Application (as defined below). Supplier and Customer may be collectively referred to as the **"Parties"**.

1 Definitions

"Application" means the software application known as Meisterplan, made available via the Internet, and more fully described in the material available at <https://meisterplan.com/wp-content/uploads/Meisterplan-Product-Description.pdf>

"Application Data" means data entered by the Customer into the Application.

"Confidential Information" means information of a Party that is disclosed in writing or orally and is designated as confidential or proprietary at the time of disclosure to the Party receiving Confidential Information (**"Recipient"**), or that due to the nature of the information the Recipient would clearly understand it to be confidential information. Confidential Information does not include any information that: (i) was or becomes generally known to the public through no fault of the Recipient; (ii) was rightfully in the Recipient's possession at the time of disclosure without restriction on use or disclosure; (iii) was independently developed by the Recipient without use of the disclosing Party's Confidential Information; or (iv) was rightfully obtained by the Recipient from a third party not under a duty of confidentiality.

"Environment" is a logical unit on which the Application is operated. This may be a physical or virtual server; which can be accessed with the aid of a browser.

"Indemnified Parties" means a party who is entitled to be indemnified under this Agreement, together with its employees, directors, agents, and representatives

"Resource" means an individual person or material resource that you plan for using the Application. Each resource may also log in as a user of the Application. If Customer uses "placeholder", "proxy-resources" or roles, one Resource must be licensed for every represented person or material resource.

"Server" means the data processing system or systems from which Supplier makes the Application available.

“Webshop” means the Meisterplan Webshop through which Customer may purchase certain services offered by Supplier by completing an online agreement process.

2 Scope of Agreement

Formation of Agreement: Supplier will provide access to the Application, and provide any other services agreed by the parties, in accordance with the terms set out in one or more signed order forms (each an **“Order”**), or selected by Customer on the Webshop. The terms agreed by Customer in the Webshop, and/or terms agreed by the parties in an Order, together with these Terms, are collectively referred to herein as the **“Agreement.”**

Application trial versions: These Terms will apply to any trial versions of the Application provided to Customer. Trial versions may be used solely for trial purposes for a limited period. A trial version may not be used for normal business operations. Any Application Data associated with a trial will be deleted automatically 30 days after the end of the trial.

Updates, Upgrades, and Releases: Supplier may provide the Customer with new versions of the Application developed during the Agreement term (in particular updates, upgrades or releases), which may contain extended functionalities. Customer acknowledges that Supplier’s decision to release new version is solely in its discretion, and Customer has no right to demand new versions or addition of any specific functionality unless explicitly agreed by the Parties.

Environments: Unless otherwise agreed by the Parties, Customer will have access to one (1) environment. No additional environments will be provided for testing or quality assurance purposes.

User Manual: Supplier will provide Customer with an online user manual for the Application.

Data Backup: The Application Data will be backed up on the Server at least once per day, unless agreed otherwise between the Parties. The backup will be held for thirty (30) days before being automatically overwritten.

3 Proprietary Rights

Right to Use the Application: Subject to compliance with this Agreement, including payment of fees, Customer has a limited, non-exclusive right to use the Application during the Term. Customer may not transfer or sublicense this right and will not permit anyone other than its employees or other personnel acting on its behalf to use the Application. Customer shall have no rights other than those explicitly granted herein.

Limitations: Customer’s right to use the Application is limited to the number of resources included in Customer’s subscription. If Customer exceeds the number of Resources, Customer must purchase additional capacity, either via the Webshop or by executing an additional Order Form. If Customer fails to purchase sufficient capacity for the number of Resources used, Supplier may suspend Customer’s access to the Application. Upon renewal, the number of Resources will be increased to reflect the quantity used by Customer in the previous Term.

Ownership: Supplier, its Affiliates, or its licensors own all right, title, and interest in and to any and all copy-rights, trademark rights, patent rights, database rights, and other intellectual property or other rights in and to the Application, any improvements, design contributions, or derivative works thereto, and any knowledge or processes related thereto and/or provided hereunder.

4 Fee and Payment, Service Providers

Payment: Customer must pay Supplier all fees set out in the Agreement, plus any required tax (e.g. sales or value added tax) at the statutory rate. Unless otherwise agreed, all fees are due in advance of service, at the times and in the manner set out in the Webshop or Order.

Service Providers: The Supplier is entitled to use subcontractors to process personal and payment data on its behalf in order to provide services. Supplier will notify Customer of the identity of such service providers upon request and will ensure that all service providers are subject to reasonable contractual restrictions regarding the use of data.

Price: Supplier may increase the prices for the contractual services from time to time. Supplier will notify Customer of any price increase in writing or via email, and the price increase shall not apply to the period for which the Customer has already made payments.

5 Customer Responsibilities

Customer agrees to the following obligations with respect to its use of the Application:

1. not to disclose the use and login credentials assigned to Customer or the users, to prevent them from being accessed by third parties, and not to pass them to unauthorized users;
2. to protect the user IDs, passwords and the like through appropriate and customary means; Customer must notify the Supplier immediately if it suspects that the access data and/or passwords may have become known to unauthorized third parties;
3. to adhere to these Terms; and in particular:
4. not to retrieve or allow retrieval of any information or data without authorization, or to interfere with or allow interference with programs operated by the Supplier, or to infiltrate or promote infiltration into the Supplier's data networks without authorization;
5. to require authorized users to also adhere to the provisions of these Terms that apply to them;
6. to check data and information for viruses before sending them to Supplier and to install state-of-the-art antivirus software;
7. to immediately notify Supplier of any defects in the Application.

System Requirements: Customer is responsible for ensuring that it has adequate systems to access and use the Application, including internet connection, and browser software. The software environment approved by the Supplier for use of the Application is specified in the Application system requirements and is available for download at <https://meisterplan.com/wp-content/uploads/Meisterplan-System-Requirements.pdf>

Suspension: If Customer violates these Terms, Supplier may suspend Customer's access to the Application or the Application Data until such violation is resolved.

6 Data Security, Confidentiality

Data Protection: The Parties shall observe the data protection laws applicable to them. Supplier has implemented and will maintain appropriate technical and organizational measures, including information security policies and safeguards, to preserve the security, integrity, and confidentiality of the Application and Application Data, and to protect against unauthorized or unlawful disclosure or corruption of or access to personal data.

Data Usage: Customer acknowledges that Supplier may collect and process statistical data on the usage of the Application. These data points do not contain any content that was entered by a user. The data may include a generalized description of user-triggered actions, a timestamp, information on the web browser, the internal ID of the respective database, the ID of a cookie created on the website or a non-invertible identifier of the user. The purpose of the processing is the continued provision of the service, the adaptation to the developing needs of the users, the improvement of the user experience in the application, and the optimization of the internal processes of the Supplier. Besides, Customer acknowledges that Supplier processes personal data of the Customer's contact persons (contact person, address, telephone number, fax, e-mail address) for the performance of the contract, in particular within the scope of the billing. The purpose of the processing is to implement the Agreement with the Customer. Furthermore, Customer acknowledges that Supplier processes data on the usage behavior of the Customer's users within the framework of server protocols which may contain information such as IP address, time stamp or web inquiry. The purpose is, on the one hand, to search for and rectify errors, to avert threats to security, and to maintain the technical operation of the application.

Confidentiality: During and after the Term, Recipient will: (a) use the Confidential Information of the other Party solely for the purpose for which it is provided; (b) not disclose such Confidential Information to a third party, except on a need-to-know basis to its attorneys, auditors, consultants, and service providers who are under confidentiality obligations at least as restrictive as those contained herein; and (c) protect such Confidential Information from unauthorized use and disclosure to the same extent (but using no less than a reasonable degree of care) that it protects its own Confidential Information of a similar nature. If Recipient is required by law to disclose Confidential Information of the other Party or the terms of this Agreement, Recipient will give prompt written notice to the other Party before making the disclosure, unless prohibited from doing so by the legal or administrative process and cooperate with the disclosing Party to obtain where reasonably available an order protecting the Confidential Information from public disclosure.

7 Warranty and Disclaimer

Performance Warranty: Supplier warrants that during the term, if used in accordance with these Terms, the Application will perform materially as described in the specifications made available by Supplier. If the Application does not substantially conform to the specifications made available by Supplier, Supplier will remedy the defect within a reasonable period after receipt of a notice from Customer regarding the deficiency. If Supplier fails to correct the deficiency, Customer shall be entitled to reduce the agreed fee by a reasonable amount, reflecting the portion of the Application that is not available due to the defect.

If the defect is such that it renders use of the Application impossible or is seriously restricted, Customer may terminate the Agreement for cause without notice.

Disclaimer: The customer acknowledges that the service may not be free of bugs or errors and may not be available at all times or without interruption and agrees that the existence of any such bugs or errors or the occurrence of any such interruptions in availability will not constitute a breach of these Terms. Except for the express representations and warranties stated herein, Supplier: (a) makes no additional representation or warranty of any kind – whether express, implied in fact or by operation of law, or statutory – as to any matter whatsoever; (b) disclaims all implied warranties, including but not limited to merchantability, fitness for a particular purpose, and title; and (c) does not warrant that the Application will be error-free or meet Customer's requirements. Customer has no right to make or pass on any representation or warranty on behalf of Supplier to any third party.

8 Liability

Exclusions: Each party's liability in connection with this Agreement will be unlimited with respect to losses:

1. involving loss of life, personal injury or impairment to health, which are the result of an intentional or negligent act on the part of such Party or its agents or employees;
2. resulting from an intentional or grossly negligent breach of duty or other intentional or grossly negligent behavior on the part of such Party or its agents or employees;
3. for which such Party is responsible under the provisions of this Agreement related to indemnification

Limitations: EXCEPT AS SET FORTH ABOVE, UNDER NO CIRCUMSTANCES, AND REGARDLESS OF THE NATURE OF THE CLAIM, SHALL EITHER PARTY (OR THEIR RESPECTIVE AFFILIATES) BE LIABLE TO THE OTHER PARTY FOR LOSS OF PROFITS, SALES OR BUSINESS, LOSS OF ANTICIPATED SAVINGS, LOSS OF USE OR CORRUPTION OF SOFTWARE, DATA OR INFORMATION, WORK STOPPAGE OR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED UNDER THIS AGREEMENT, EVEN IF APPRISED OF THE LIKELIHOOD OF SUCH LOSSES.

TO THE EXTENT PERMITTED BY LAW, AND EXCEPT AS SET FORTH ABOVE, THE TOTAL, CUMULATIVE LIABILITY OF EACH PARTY (OR THEIR RESPECTIVE AFFILIATES) ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER BASED ON CONTRACT, TORT, BREACH OF STATUTORY DUTY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, SHALL BE LIMITED TO THE AMOUNTS PAID OR PAYABLE BY CUSTOMER DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT ENLARGE THIS CUMULATIVE LIMIT.

9 Proprietary Rights of Third Parties

Indemnification by Supplier: Supplier will indemnify, defend, and hold harmless the Customer Indemnified Parties against any actual or threatened: (a) third-party claim; (b) third-party legal action; or (c) administrative agency action or proceeding ("**Claim**") to the extent arising from or related to any alleged infringement of any third-party intellectual property rights by the Application, provided, however, that Supplier will not be responsible for alleged infringement that is due to misuse of the Application, or the combination of the Application with goods or services provided by third parties.

Indemnification by Customer: Customer will indemnify, defend, and hold harmless the Supplier Indemnified Parties against, any Claim to the extent arising from or related to use of the Application by Customer in violation of this Agreement or applicable law.

Indemnification Procedures: The Parties' indemnification obligations above are conditioned on: (a) the Indemnified Parties giving the Indemnifying Party prompt written notice of the Claim; (b) the Indemnifying Party being given full control over the defense and settlement of the Claim (as long as the settlement does not impose any liabilities on the Indemnified Parties); and (c) the Indemnified Parties providing reasonable assistance in connection with the defense and settlement of the Claim.

Infringement Remedy: If a third party asserts claims against Customer owing to the infringement of intellectual property rights by the Application, or Supplier determines that such claims are likely to arise, Supplier will, at its own discretion and expense, either (a) obtain a right to use the Application or the relevant part of the Application, or (b) change the Application in such a way that the proprietary right is not infringed, but performance of the Application is not materially diminished. If it is not possible for the Supplier to do the foregoing under reasonable conditions, then Supplier may cease providing the infringing portion of the Application and provide Customer with a pro-rata refund of any fees paid in advance for such portion.

10 Term and Termination

Term: The term will be the period set forth in an Order, or agreed via the Webshop, and any renewal periods thereafter (the "**Term**"). Unless otherwise agreed by the Parties, each Order or purchase will renew automatically for periods of one (1) year, unless terminated by either party at the end of the current annual period.

Termination: If either Party commits a material breach in the performance of any of its obligations under this Agreement, then the other Party may terminate this Agreement in its entirety by giving the defaulting Party

written notice of termination, unless the breach is cured within thirty (30) days after the defaulting Party receives notice thereof. Either Party may terminate this Agreement in its entirety upon written notice if the other Party becomes the subject of a petition in bankruptcy or any proceeding related to its insolvency, receivership or liquidation, in any jurisdiction, that is not dismissed within sixty (60) days of its commencement, or an assignment for the benefit of creditors. In addition to the foregoing, Supplier shall have the right to terminate this Agreement at its discretion if it determines that Customer or its use of the Service is not appropriate, in which case it will promptly refund any fees paid by Customer in advance.

Post-Termination Obligations: If this Agreement expires or is terminated for any reason: (a) Customer will pay Supplier any amounts that have accrued before, and remain unpaid as of, the effective date of the expiration or termination; (b) licenses and use rights granted to Customer with respect to the Application will immediately terminate; and (c) the Parties' rights and obligations that, by their nature, are designed to extend past the termination or expiration of the Agreement will survive.

11 Miscellaneous

Updates to Terms: Supplier may update these Terms from time to time by posting modified terms at <https://meisterplan.com/terms-of-service/us>. Customer acknowledges that it is responsible for monitoring this site for changes, and that continued use of the Application following the posting of revised Terms will constitute acceptance of any revisions. All material changes apply prospectively only, and any changes to pricing will apply only in the next renewal period for Customer's subscription. If Customer objects to any change, it must notify Supplier of its objection within 30 days of the revision, and the parties will work in good faith to resolve the objection. If Customer's objection cannot be resolved, its sole remedy will be to terminate this Agreement and receive a pro-rata refund of fees paid in advance.

Force Majeure: Supplier will not be liable for delays in performance due to force majeure events, which shall include events that make it significantly more difficult or impossible for the Supplier to perform the services under the Agreement, including in particular strike, lockout, official orders, failure of, or problems associated with, communication networks and gateways of other operators, provided that Supplier was not responsible for such events.

Publicity: If entering into a paid Agreement (thus the exception of trial versions), the Customer hereby grants to the Supplier the right to use the Customer's company logo in marketing materials such as the Supplier's website solely to identify the Customer as a Meisterplan customer. This permission may be revoked informally by sending an e-mail to mail@meisterplan.com. The Supplier shall not use the Customer's logo without prior written permission in any other manner.

Severability: If a provision of the Agreement and/or of these Terms should be or become ineffective or should be incomplete, this shall not affect the remainder of the Agreement; the remaining provisions shall remain effective. In such a case, the Parties shall agree on a provision that best fulfils the intent and purpose of the Agreement and that reflects those of the invalid provision as closely as possible.

Law and Jurisdiction: The Agreement and these Terms shall be governed by the law of the state of Washington, USA, without regard to its conflict of law principles. The Parties hereby irrevocably consent to the exclusive jurisdiction of, and venue in, any federal or state court of competent jurisdiction located in King County, Washington, USA, for the purposes of adjudicating any dispute arising out of this Agreement.

Relationship: The Parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties. Except as set forth in this Agreement, nothing in this Agreement, expressed or implied is intended to give rise to any third-party beneficiary.

Assignability: Neither Party may assign its rights or obligations under this Agreement without the other Party's prior written consent. Notwithstanding the foregoing, either Party may assign its rights and obligations under this Agreement to an Affiliate as part of a reorganization, or to a purchaser of its business entity or substantially all of its assets or business to which rights and obligations pertain without the other Party's consent, provided that: (a) the purchaser is not insolvent or otherwise unable to pay its debts as they become due; and (b) any assignee is bound hereby. Other than the foregoing, any attempt by either Party to transfer its rights or obligations under this Agreement will be void.

Competition: If you are a Competitor, defined as an individual or an entity engaged in a business that provides products or services substantially similar to Meisterplan's offerings, including agents, employees, or representatives, you are expressly forbidden from accessing or using the Application. This prohibition extends to signing up for free trials. Additionally, you may not access the Application for purposes of monitoring its availability, performance, or functionality, or for any other benchmarking or competitive purposes. Violation of this clause may result in immediate termination of your access to the Application and may subject you to legal action.