

Terms and conditions for certain Oasys software installed on hardware

Parties

This agreement (“Agreement”), being these terms and conditions together with any Order(s) (as defined below), is a binding legal agreement between you, either an individual or an entity, (“Customer”) and the service provider, Oasys Limited (“Oasys”) whose registered office is at 8 Fitzroy Street, London, W1T 4BJ, United Kingdom for the accompanying software owned by Oasys.

Definitions

Authorised Systems:	computers owned and/or controlled exclusively by the Customer.
Business Day:	a weekday which is not a public holiday in England.
Contact:	one or two persons representing the Customer, who shall be the point of contact for any Support Services requested by the Customer.
Content:	the data inputted by the Customer, parties authorised by the Customer under clause 1.2, or Oasys on the Customer's behalf for the purpose of using the Software or facilitating the Customer's use of the Software.
Documentation:	the documentation associated with the Software, as referred to in the Order.
Effective Date:	the date the Customer entered into this Agreement, as specified in the Order.
Fees:	the fees payable by the Customer to Oasys for the Software and the Support Services, as set out in the Order.
Initial Licence Term:	the Customer's initial paid licence period as set out in the Order.
Licence Renewal Period:	following the expiry of the Initial Licence Term, each successive period of the number of months set out in the Order.
Licence Term:	has the meaning given in clause 4.1 (being the Initial Licence Term together with each and every subsequent Licence Renewal Period, until the termination of this Agreement).
Order:	any written order agreed between the Customer and Oasys for the provision of Software and/or Support Services which the parties agree shall be subject to these terms and conditions.

- Software:** the software described in the Order.
- Support Services:** the support services described in the Order.
- Transfer:** installing and/or de-activating a licence to the Software on one computer and installing and/or activating a licence to the same Software on one different computer, where both computers are owned and controlled exclusively by the Customer.

1. Account Terms

- 1.1 Subject to the restrictions set out in this Agreement and other terms of this Agreement, Oasys grants to the Customer a non-exclusive, non-transferable right to install and use the Software during the Licence Term solely for the Customer's internal business operations on the Customer's Authorised Systems.
- 1.2 Where the Customer is an entity, it may authorise its employees, agents, joint venture partners and subcontractors to install and use the Software during the Licence Term solely for the Customer's internal business operations on the Customer's Authorised Systems, subject always to the Customer and such authorised parties' continuing compliance with the restrictions and other terms of this Agreement. The Customer shall assume primary responsibility for the compliance by its employees, agents, joint venture partners and subcontractors with the terms of this Agreement.
- 1.3 The total maximum number of Authorised Systems for which the licence under clause 1.1 of this Agreement is granted is stipulated in the Order. If the Customer wishes to increase the maximum number of Authorised Systems from what is provided for in the Order, the Customer shall contact Oasys and the parties shall agree a suitable variation to the terms of the Order (in respect of which the value of the Fees may also increase, at Oasys' sole discretion).
- 1.4 The Customer may perform an unlimited number of Transfers of the Software free of charge, provided that the total number of copies of the Software that are executed on the Customer's Authorised Systems at any given time shall not exceed the total maximum number of Authorised Systems provided for under the Order and/or clause 1.3.
- 1.5 Where the Customer is an entity, it may enable its authorised employees, agents, joint venture partners and subcontractors to share the Software via remote access and/or computer virtualisation applications only if:
- a) the total maximum number of Authorised Systems for which the licence under clause 1.1 is granted is greater than one; and
 - b) the number of individual users with such access to the Software at any given time shall not exceed the total maximum number of Authorised Systems provided for under the Order and/or clause 1.3.
- 1.6 The Customer shall use the Software only in accordance with its Documentation.

1.7 The Customer must not:

- a) use the Software for any illegal or unauthorised purpose;
- b) in the use of the Software, violate any laws in the Customer's jurisdiction (including but not limited to copyright or trademark laws);
- c) modify, adapt or hack the Software or modify another website so as to falsely imply that it is associated with the Software, Oasys, or any other Oasys software or service;
- d) reproduce, duplicate, copy, sell, resell, create derivative works from or exploit any portion of the Software, use of the Software or access to the Software without the express written permission of Oasys;
- e) decode, reverse engineer, disassemble, decompile or otherwise translate or convert the Software or any part of it, except and solely to the extent that the foregoing acts are expressly permitted by law;
- f) loan, lease, assign, charge, rent or otherwise sublicense this Agreement;
- g) remove or alter any copyright, proprietary or similar notices from the Software (or any copies of it);
- h) upload, post, host, or transmit unsolicited email, SMSs, "spam" messages or any material on or in relation to the Software that is offensive, threatening, libellous, defamatory, pornographic, obscene or otherwise objectionable;
- i) transmit any worms or viruses or any code of a destructive nature; and/or
- j) use the Software in any country that is not stated in the Customer's billing address or other applicable address(es) set out in the Order.

1.8 The Customer understands and agrees that:

- a) Oasys uses partners to provide the Software;
- b) the running, technical processing and transmission of the Software, including the Customer Content, may be transferred unencrypted and involve (i) transmissions over various networks; and (ii) changes to conform and adapt to technical requirements of connecting networks or devices;
- c) unless Oasys has agreed to provide the Customer with an availability SLA (in which case such SLA shall apply), the Customer accepts and acknowledges that the Software is provided on an "as-is" and "as-available" basis; and
- d) where the Software includes or is based on data provided by third parties, Oasys only accepts liability for the output of the Software containing or based on such data to the extent that it has expressly accepted any such liability by separate agreement in writing.

- 1.9 Oasys reserves the right to temporarily disable the Customer's account if the Customer's usage significantly exceeds the average usage of other Software customers or such other usage criteria as have been agreed with the Customer in writing. Oasys will contact the account owner before taking any action except in rare cases where the level of use may negatively impact the performance of the Software for other customers or for Oasys.
- 1.10 If Oasys makes material changes to the terms of this Agreement, it will notify the Customer by email or by posting a notice on their site before the changes are effective. Any new features that augment or enhance the current Software, including the release of new tools and resources, shall be subject to this Agreement. Continued use of the Software after any such changes shall constitute the Customer's consent to such changes. The Customer can review the most current version of the terms and conditions of the Software at any time at: <https://www.oasys-software.com/terms-conditions/>
- 1.11 The Customer acknowledges that the Software is provided on an "as-is" and "as-available" basis and as such are subject to continuous development and change of specification or Documentation without notice. Notwithstanding the foregoing, Oasys will give reasonable notice of any material change to the specification or any functionality or API call to implementing such change. A change shall not be material unless, when implemented, it is likely to negatively impact on the Customer's use of the Software.
- 1.12 The Customer may not access the Software other than through the documented user interface. Unless the Customer has been granted, and has paid for, API access as set out in clause 2.6 below, the Customer may not access the Software programmatically. In particular, the Customer may not use any form of "screen scraper" or other automated process, to access any part of the Software's human-machine interface. The Customer may not attempt, or cause any third party to attempt, to access the Software for penetration testing or other security or performance-related purposes without the prior written permission of Oasys, which may be withheld or conditioned at Oasys's absolute discretion.

2. Maintenance, Support and API Terms

- 2.1 The Customer shall nominate the Contact(s). The Support Services will only be provided to the Contact(s), and the Customer must ensure that the Contact(s) are competent and knowledgeable users of the Software.
- 2.2 Oasys shall provide the Support Services throughout the duration of the Licence Term.
- 2.3 Oasys reserves the right to refuse to provide the Support Services on superseded versions of the Software once a new version has been available for at least six months.
- 2.4 Oasys will not, under this Agreement, provide:

- a) version of Software that contain platform upgrades, substantial additional functionality or improved performance;
- b) any consultancy advice including, but not limited to, best-practice technical advice, data conversion, engineering advice; and/or
- c) on-site installation or on-site support.

2.5 Oasys is not obliged to provide Support Services if any of the following occurs:

- a) malfunction of hardware or operating system software;
- b) negligence by the Customer;
- c) the Customer changes to an un-supported operating system;
- d) a Contact is deemed by Oasys to be insufficiently competent with the Software for the issue to be addressed effectively; and/or
- e) where the problem is caused by third party applications that have not been developed by Oasys.

2.6 Subject to clauses 1.3-1.5, where Oasys provides the facility, the Customer may access the Software via an Application Programming Interface (API). Any use of the API, including use of the API through a third-party product that accesses an Oasys service, is bound by these terms and conditions plus the following specific terms:

- a) The Customer expressly understands and agrees that Oasys shall not be liable for any direct, indirect, incidental, special, consequential or exemplary damages, including but not limited to, damages for loss of profits, goodwill, use, data or other intangible losses (even if Oasys has been advised of the possibility of such damages), resulting from the Customer's use of the API or third-party products that access data via the API.
- b) Abuse or excessively frequent requests to Oasys Services via the API may result in the temporary or permanent suspension of the Customer's account access to the API. Oasys, in its sole discretion, will determine abuse or excessive usage of the API. Oasys will make a reasonable attempt via email to warn the account owner prior to suspension.
- c) The Customer shall not access or attempt to access the API other than through the documented interface.

3. Payment

3.1 The Customer shall pay the Fees to Oasys for the Software and the Support Services in accordance with this clause 3 and the Order. Unless otherwise set out in an Order, all Fees are subject to yearly payment plans.

3.5 All paid plans must enter a valid payment account.

- 3.6 For yearly payment plans, the Fees are invoiced in advance on a yearly basis.
- 3.7 The Fees are non-refundable. There will be no refunds or credits for partial months of service, upgrade/downgrade refunds, or refunds for months unused with an open account.
- 3.8 If Oasys has not received payment within 30 days of the date of the invoice, and without prejudice to any other rights and remedies:
- a) Oasys may, without liability to the Customer, disable the Customer's password, account, API token (if applicable) and access to all or part of the Services and Oasys shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
 - b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of the Bank of England from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 3.9 All fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and the Customer shall be responsible for payment of all such taxes, levies, or duties.

4. Term, Cancellation and Termination

- 4.1 This Agreement shall, unless otherwise terminated as provided in this clause 4, commence on the Effective Date and shall continue for the Initial Licence Term. Thereafter, this Agreement shall be automatically renewed for the Licence Renewal Periods, unless and until:
- a) either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Licence Term or any Licence Renewal Period. In which case this Agreement shall terminate upon the expiry of such Initial Licence Term or Licence Renewal Period; or
 - b) otherwise terminated in accordance with the provisions of this Agreement.

The Initial Subscription Term together with any and all subsequent Licence Renewal Periods (until the termination of this Agreement) shall constitute the Subscription Term.

- 4.2 Without affecting any other right or remedy available to it, Oasys may immediately terminate this Agreement or any Support Services and/or the provision of any Software if:
- a) the Customer has used or permitted the use of the Software otherwise than in accordance with this Agreement; or
 - b) the Customer fails to pay any of the Fees when due.

Such termination of the Support Services and/or Software will result in the deactivation or deletion of the Customer's access to the Software, and the forfeiture and relinquishment of all Content held by Oasys.

- 4.3 Either party may terminate this Agreement or any Support Services and/or any Software with immediate effect if:
- a) it has notified the other party in writing that it is in breach and such breach is not remedied within thirty (30) days; or
 - b) the other party has a receiver or administrative receiver appointed of it or over any part of its undertaking or assets or shall pass a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if such party enters into any voluntary arrangement with its creditors or shall become subject to an administration order.
- 4.4 If the Customer gives notice of termination of this Agreement in accordance with this clause 4, the Customer will be liable for the full amount of Fees incurred between when the termination was notified and the date when the termination becomes effective. The Customer will not receive a refund of Fees paid, or discount of Fees payable up until the date the termination becomes effective for any outstanding period of service.
- 4.5 Oasys may suspend the provision of Support Services and/or the Software without notice, without prejudice to the termination rights set out in this Agreement, should either the right to terminate have arisen, or Oasys reasonably determines that its right to terminate is imminent.

5. Copyright and Content Ownership

- 5.1 The Customer acknowledges and agrees that Oasys and/or its licensors own all intellectual property rights in the Support Services and the Software. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Support Services or the Software.
- 5.2 Oasys claim no intellectual property rights over the materials the Customer provides in respect to the Support Services and/or the Software. The Customer's profile and materials uploaded remains the Customer's.
- 5.3 The Customer grants (or undertakes to procure the grant) to Oasys a non-exclusive, royalty free licence to use any and all proprietary materials, data feeds or items necessary to provide the Support Services and/or the Software, if any. Subject to maintaining confidentiality in accordance with this Agreement, Oasys may use any Content in connection with providing the Support Services and/or Software and any other products or services agreed between the parties, as Oasys may require.

6 Indemnity

- 6.1 The Customer shall defend, indemnify and hold harmless Oasys against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use or misuse of the Software, or for any use or misuse of the Software arising from the Customer's default, or for any claim of breach of copyright, database right or other intellectual property right arising out of Oasys's use of any data or content which the Customer has purported to license or provide a licence for under clause 5.3 provided that:
- a) the Customer is given prompt notice of any such claim;
 - b) Oasys provide reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
 - c) the Customer is given sole authority to defend or settle the claim.
- 6.2 Subject to clause 7.5, Oasys shall defend the Customer, the Customer's officers, directors and employees against any claim that the Software infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
- a) Oasys is given prompt notice of any such claim;
 - b) the Customer provide reasonable co-operation to Oasys in the defence and settlement of such claim, at the Oasys' expense; and
 - c) Oasys is given sole authority to defend or settle the claim.
- 6.3 In the defence or settlement of any claim, Oasys may procure the right for the Customer to continue using the Software, replace or modify the Software so that it becomes non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 2 Business Days' notice to the Customer.
- 6.4 In no event shall Oasys, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- a) a modification of the Software by anyone other than Oasys;
 - b) the Customer's use of the Software is in a manner contrary to the instructions given to the Customer by Oasys or otherwise than in accordance with this Agreement; or
 - c) the Customer's use of the Software after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

7. Limitation of Liability

- 7.1 Oasys does not warrant that:
- a) the Software will meet the Customer's specific requirements;
 - b) use of the Software will be uninterrupted, timely, secure, or error-free;
 - c) the results that may be obtained from the use of the Software will be accurate or reliable;
 - d) the quality of any products, services, information, or other material purchased or obtained by the Customer through the Software will meet the Customer's expectations; or
 - e) any errors in the Software will be corrected.
- 7.2 The Customer expressly understands and agrees that Oasys shall not be liable for (a) any loss of profits, loss of goodwill, loss of use, or loss of data and/or (b) indirect, incidental, special, consequential or exemplary damages, or other intangible losses (even if Oasys has been advised of the possibility of such damages), resulting from: (i) the use or the inability to use the Software and/or the Support Services; (ii) the cost of procurement of substitute goods and services resulting from any goods, data, information or services purchased or obtained or messages received or transactions entered into through or from the Software and/or the Support Services; (iii) unauthorized access to or alteration of the Customer's transmissions or data; (iv) statements or conduct of any third-party on the Software; (v) or any other matter relating to the Software and/or the Support Services.
- 7.3 All warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement.
- 7.4 Nothing in this Agreement excludes Oasys' liability for:
- a) death or personal injury caused by Oasys' negligence; or
 - b) fraud or fraudulent misrepresentation.
- 7.5 Subject to clause 7.4 but otherwise notwithstanding any other term of this Agreement, Oasys' total liability to all parties in contract (including in respect of the indemnity at clause 6), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the value of the Fees payable to Oasys pursuant to this Agreement in the 12 months immediately preceding the cause of action giving rise to any one claim, provided that Oasys' total aggregate liability for all claims shall be limited to the total value of the Fees payable to Oasys pursuant to this Agreement.

8. Data Sharing and Confidentiality

- 8.1 Each party shall retain in confidence and require its employees, agents and contractors, to retain in confidence all information contained in the Software and all information and know-how, regardless of form, transmitted to such party that the disclosing party has identified as being proprietary and/or confidential or which, by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary and/or confidential (“Confidential Information”). The receiving party shall retain Confidential Information in as secure a manner as reasonably possible, but in no event less secure than the receiving party retains its own Confidential Information. Confidential Information shall remain the sole property of the disclosing party and shall not be disclosed to any third party without the express written consent of the disclosing party (except, solely for the receiving party’s internal business needs, to consultants who are bound by a written agreement with the receiving party to maintain the confidentiality of such Confidential Information in a manner consistent with this Agreement).
- 8.2 Confidential Information shall not include any information that:
- a) is at the time of disclosure or subsequently becomes publicly available without the receiving party’s breach of any obligations owed the disclosing party;
 - b) became known to the receiving party prior to the disclosing party’s disclosure of such information to the receiving party;
 - c) became known to the receiving party from a source other than the disclosing party other than by the breach of an obligation of confidentiality owed to the disclosing party;
 - d) is independently developed by the receiving party; or
 - e) is produced in compliance with applicable law or a court order, provided the other party is given reasonable notice of such law or order and an opportunity to attempt to preclude or limit such production. This Agreement constitutes the proprietary information of Oasys. This clause shall survive termination of the Agreement.
- 8.3 In carrying out the Services, Oasys may have access to and acquire the Content. The Customer agrees to give Oasys access to such Content on a continuous basis and/or on request using such means or methods as are set out under the Agreement (including, where applicable, programmatic API access).
- 8.4 The Customers grants to Oasys a perpetual, irrevocable, royalty-free, non-exclusive, worldwide licence to extract, store, analyse, copy and publish the results of the analysis and extracts of the Content, subject always to the restrictions set out under this clause 8 and clause 10 below. Oasys may analyse the Content (alone and in combination with other data) for any purpose at any time. The Customer shall have no rights in the analysis of such Content.
- 8.5 Oasys shall keep the Content confidential in accordance with the confidentiality obligations as set out in this clause 8. However, such obligation of confidentiality shall not apply to the publication or dissemination of a subset of the Content, or the results of the analysis of the Content (including an analysis involving other data)

("Results"); provided that the Results are not identified or, identifiable with a specific customer, structure or project.

- 8.6 Where the Content includes personal data (within the definition of the relevant data protection laws, including the UK Data Protection Act or the General Data Protection Regulation), such Content shall be dealt in accordance with applicable data protection laws as set out in clause 10 below.

9. Conflict

If there is any conflict between any of the provisions in the main body of this Agreement and the Order, the provisions in the Order shall prevail.

10. Data Protection

- 10.1 Where applicable, each party undertakes to comply with its obligations under any relevant data protection laws including (where applicable) the UK Data Protection Act 1998 or the General Data Protection Regulation.
- 10.2 If Oasys processes any personal data on the Customer's behalf when performing its obligations under this Agreement, the parties record their intention that the Customer shall be the data controller and Oasys shall be a data processor and in any such case:
- a) the Customer acknowledges and agrees that the personal data may be transferred or stored in the country where the Customer and the Authorised Users are located and outside of the European Economic Area in order to carry out the Services and Oasys' other obligations under this Agreement;
 - b) the Customer shall ensure that the Customer is entitled to provide the relevant personal data to Oasys so that Oasys may lawfully use, process and transfer the personal data to perform its obligations under this Agreement;
 - c) the Customer shall ensure that the relevant third parties have been informed of, and where necessary, have given their consent to, such use, processing and transfer as required by all applicable data protection laws; and
 - d) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.
- 10.3 Where appropriate and agreed between the parties the terms of this clause 10 shall be supplemented by a Data Processing Agreement in a form to be supplied by Oasys.

11. No Waiver

No delay, neglect or forbearance on the part of either party in enforcing against the other party any term of this Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of the party under this Agreement.

12. Severability

If it is held under any enactment or rule of law that any provision of this Agreement is void or otherwise ineffective in whole or in part then any other part and the other terms of this Agreement shall continue in full force and effect.

13. Entire Agreement

This Agreement is the complete and exclusive statement of the agreement between the Customer and Oasys which supersedes all proposals or prior agreements oral or written save any expressly agreed terms that have been signed by an authorised representative of Oasys and the Customer and save as expressly set out in this Agreement all representations, conditions or warranties express or implied statutory or otherwise are excluded, to the maximum extent permitted by law.

14. Variation

A purported variation of this Agreement is not effective unless in writing signed by an authorised senior representation of both parties.

15. Notices

15.1 Any notice or consent required or given under this Agreement shall be in writing, in English, either personally delivered or sent by email or by first class airmail, and sent to the registered address of the receiving party or such other address as such party may from time to time designate by notice to the other party.

15.2 Communications shall be deemed to have been received as follows:

- a) (if sent by post) three Business Days after posting;
- b) (if delivered by hand) on the day of delivery, if delivered at least two hours before the close of business hours on a Business Day, and otherwise on the next Business Day;
- c) (if sent by email) upon receipt of an acknowledgement email confirming the receipt of the email message, if received at least two hours before the close of business hours on a Business Day, and otherwise on the next Business Day. An automatic reply shall not be deemed as the acknowledgement of an email message,

In this clause, “business hours” means between the hours of 09.00 and 17:30 GMT on a Business Day.

16. Third Party Rights

The parties do not intend that any term of this Agreement shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement.

17. Assignment

- 17.1 The Customer shall not, without our prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 17.2 Oasys may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

18. Law

- 18.1 This Agreement shall be governed by and construed in accordance with the law of England and Wales.
- 18.2 The English courts shall have exclusive jurisdiction to determine any disputes which may arise out of, under, or in connection with this Agreement.