

HMS Hub – Terms of Service

Welcome to HMS Hub. Please read these terms and any other terms referenced to herein carefully.

HMS Hub is a web-based service platform that enables transfer and communication of data from HMS gateways (sold separately), as integrated in an industrial network, through different interfaces. HMS Hub includes services that, inter alia, enables secure data transfer, device management of HMS gateways, data storage, process visualisation and creation of data logs and reports, as may be further detailed and explained in the Specification (“**HMS Hub**”). HMS Hub can be accessed through www.hms-hub.com, the HMS Hub mobile application (IOS/Android) and through the Kolibri API.

By creating an HMS Hub account, through your acceptance of this Agreement by ticking the checkbox or by continuing to use HMS Hub after being notified of a change to these terms, you acknowledge your full understanding of and agree to be legally bound by this Agreement.

DEFINITIONS

“**Advertisers**” means advertisers, sponsors and other third parties that may post promotions, links and advertisements in HMS Hub;

“**Agreement**” means these terms of service, including any addendums, and any other operating rules and policies as set forth by HMS, in its own discretion, and made available to the Customer, directly or by reference, as amended from time to time;

“**Business Day**” means a day (other than a Saturday, Sunday or public holiday) on which commercial banks are open for general banking business in the jurisdiction where HMS is incorporated, other than for Internet banking services only;

“**Confidential Information**” means any commercial or technical information furnished by one party to the other party including, but not limited to, trade secrets, information pertaining to Intellectual Property Rights, the Specification, Registration Data, technical data, inventions, formulations, testing methods, other methods and processes and all other proprietary information or materials, whether disclosed in Written or oral form. However, Confidential Information does not include any information that the Receiving Party can show (i) was known to the Receiving Party at the time of disclosure by the Disclosing Party, (ii) was in the public domain at the time of the execution of this Agreement or which has come in the public domain during the term of this Agreement through no fault or breach of the Agreement by the Receiving Party or (iii) has been, in a verifiable manner, independently developed by the Receiving Party without reference to or use of the Confidential Information of the Disclosing Party or the Disclosing Party;

“**Customer**” means the legal entity entering into this Agreement and, where relevant, its Users;

“**Customer Administrator Account**” means the Customer’s principal HMS Hub account through which the Customer is able to assign access and user rights to HMS Hub to its Users, as further detailed in clause 1.2;

“**Customer Data**” means all data and information, including Registration Data, relating to the Customer and its operations, facilities, customers, clients, personnel, assets and programs in whatever form that may exist and whether entered into, stored in, generated by or

processed through or as a part of the use of HMS Hub or to which HMS otherwise may have access as a consequence of this Agreement;

“**Disclosing Party**” means the party disclosing Confidential Information;

“**Force Majeure Event**” means an event beyond a party’s reasonable control including, without limitation, strikes, lock-outs or other labour disturbances or disturbances by fire, flood, war, embargoes, blockades, riots, governmental interference, interruptions, loss or malfunctions of utilities, communications, hardware or software services or from defects or delays in the performance of its suppliers or subcontractors if caused by any circumstance referred to in the foregoing;

“**HMS Hub**” means as described above in the preamble;

“**Intellectual Property Rights**” means, including without limitation, patents, trademarks, service marks, registered designs, applications for any of the foregoing, copyrights, design rights, know-how, trade and business names and any other similar protected rights in any country, whether registered or not, as well as all drawings, plans, diagrams, specifications, programs, materials, methods, processes, techniques, technologies, data or other information;

“**Kolibri API**” means an event-based, secured protocol which enables connection to HMS Hub from any cloud based or local data system;

“**Price List**” means HMS’ at each time applicable price list for HMS Hub, whether furnished in physical form or made available online;

“**Privacy Policy**” means the latest available version of HMS’ Privacy Policy made available on HMS’ website;

“**Receiving Party**” means the party receiving Confidential Information;

“**Registration Data**” means certain current, complete and accurate information about the Customer as requested by HMS from time to time and specifically in conjunction with the application for an HMS Hub account;

“**SCC**” means the Stockholm Chamber of Commerce;

“**Specification**” means any relevant functional, technical or commercial specification of HMS Hub and its functionalities, furnished in physical form or from within HMS Hub or otherwise made available online (such as on HMS’ website or by e-mail);

“**User(s)**” means the employees, representatives, consultants, contractors, agents and customers of the Customer for whom the Customer has acquired access and user rights to HMS Hub in accordance with this Agreement; and

“**Written**” shall be defined to include paper copies, e-mails and other generally accepted electronic communications means, and the term “**Writing**” shall have a meaning correlative to the foregoing.

1. APPLICATION, SUBSCRIPTION, USER RIGHTS

- 1.1 HMS Hub is solely intended for commercial use, to the exclusion of any private use. This Agreement shall therefore only apply vis-à-vis legal entities.
- 1.2 The Customer's initial application for an HMS Hub account is made subject to a manual verification process by HMS and, if such application is approved, a Customer Administrator Account for the Customer is assigned. The Customer will through the Customer Administrator Account be able to (i) grant each User a right to create an account in HMS Hub and (ii) decide upon the level of authorisation each User shall have with respect to actions, including the right to purchase services within HMS Hub for which the Customer will be invoiced, that can be undertaken by the User in HMS Hub. For the avoidance of doubt, the Customer acknowledges and agrees that based on the extent of rights granted to a User, such User will be able to order payed services within HMS Hub without the Customer's prior authorisation in each case and the Customer will be invoiced the amounts payable for any and all such services ordered by Users within HMS Hub.
- 1.3 The Customer agrees to provide and maintain Registration Data as requested by HMS. The Customer acknowledges that HMS may disclose certain Registration Data where required pursuant to applicable law. HMS reserves the right to suspend or terminate the Customer's access to HMS Hub should the Registration Data provided by the Customer be, in any way, inaccurate, incomplete or not up-to-date, with or without prior notification to the Customer.

2. PROVISION OF HMS HUB

- 2.1 HMS will, during the term of this Agreement and subject to the Customer's timely payment of applicable fees and use of HMS Hub in accordance with this Agreement and the Specification, (i) provide HMS Hub to the Customer and (ii) use commercially reasonable efforts to make HMS Hub available at least ninety-nine point five per cent (99.5%) on an annual basis (based on an assumed requirement of continuous availability), except for in the event of (a) downtime for scheduled maintenance (of which prior Written notice is given to the Customer), (b) downtime for emergency maintenance (of which prior Written notice is given to the Customer if practically feasible), (c) a Force Majeure Event and/or (d) subject to clause 3.2, disruptions in the Customer's IT-systems and/or infrastructure.
- 2.2 HMS grants to the Customer a non-exclusive, non-transferable, revocable right for its Users to access and use HMS Hub in accordance with this Agreement and the Specification during the term of this Agreement.
- 2.3 HMS reserves the right to, at any time and in its own discretion, modify, update and/or upgrade, temporarily or permanently, HMS Hub (or any part thereof), provided that such modification, update and/or upgrade does not diminish the overall functionality of HMS Hub. Further, the Customer acknowledges and agrees that certain modifications, updates and/or upgrades related to HMS Hub may require the application of new software to HMS gateways in order to enable continuous connection to HMS Hub.

3. USE OF HMS HUB

- 3.1 The Customer is responsible for all activity that occurs under the Customer's accounts by or on behalf of the Customer and for all activities taken while using HMS Hub. For the avoidance of doubt, the Customer undertakes to (i) be solely responsible for all Users' activity, which at all times must be in accordance with this Agreement, (ii) be solely

responsible for any and all unauthorised use of HMS Hub under any Customer accounts, (iii) be solely responsible for Customer Data (other than with respect to HMS' obligations in regard of Customer Data according to this Agreement), (iv) obtain and maintain during the term of this Agreement all necessary consents, agreements and approvals for all actual or intended use of Customer Data, information, data or other content which the Customer will use in connection with HMS Hub, (v) not use HMS Hub in any manner contrary to this Agreement including any and all instructions provided by HMS connected thereto, the Specification, applicable law or regulations in any jurisdiction where HMS Hub is used, (vi) not disrupt, disable, decompile, reverse engineer or otherwise interfere with HMS Hub, (vii) not provide access to HMS Hub to other users than the Users and (viii) use all reasonable efforts to prevent unauthorised access to, or use of, HMS Hub and notify HMS promptly of any known or anticipated unauthorised access or use.

3.2 In order to use HMS Hub, the Customer must, apart from meeting basic functional requirements for access to and use of web-based content, have or obtain access to the World Wide Web, either directly or through devices that can access web-based content such as HMS Hub. For the avoidance of doubt, the Customer is responsible for its own bandwidth and adequate internet connection.

3.3 HMS shall have the right to audit the Customer's compliance with this Agreement at any time during the term of this Agreement. If during such audit HMS, in a verifiable manner, determines that the Customer has used HMS Hub contrary to this Agreement, such as by allowing access to HMS Hub other than as permitted herein or has otherwise violated any part of this Agreement, and as a result additional fees are owed to HMS, HMS shall invoice the Customer for such discrepancies in accordance with this Agreement. The Customer shall bear the costs associated with the audit should the audit conclude the Customer's breach of this Agreement. HMS' audit right shall not limit HMS' other rights and remedies under this Agreement.

3.4 The Customer agrees that HMS may, with, if reasonably practical, prior notice to the Customer, suspend the Customer's access to HMS Hub if HMS reasonably concludes that the Customer's use of HMS Hub is causing immediate risk for and/or ongoing harm to HMS or others. HMS shall use commercially reasonable efforts to resolve the issues causing the suspension of access to HMS Hub. Consequently, the Customer agrees that HMS will not be liable to the Customer or any third parties for any suspension of access to HMS Hub under such circumstances as described in the foregoing.

4. FEES AND PAYMENT

4.1 The Customer shall pay the relevant fees set out in the Price List in accordance with this Agreement. The fees may consist of (i) a monthly subscription fee for access to HMS Hub, (ii) one-time payments (such as for project/device registration) and (iii) recurring fees, volume-based fees and one-time payments for services ordered by the Customer in HMS Hub (the Customer will be presented with information regarding the triggering of a cost in conjunction therewith).

4.2 Unless otherwise specified in the relevant invoice, fees will become due and payable thirty (30) days from the order date. The Customer is responsible for providing HMS with complete, accurate and up to date billing and contact information. The Customer may be invoiced by a third party appointed by HMS to market and sell subscriptions to HMS Hub as an official HMS agent on behalf of HMS. Notwithstanding the payment of fees to a third

party agent appointed by HMS, HMS shall always remain the contracting party in relation to the Customer.

- 4.3 The Customer's payment obligations are non-cancellable and fees paid are non-refundable. Any fees owed by the Customer at the time of termination of this Agreement, howsoever occasioned, will be due and payable immediately upon first demand from HMS.
- 4.4 HMS may in its own discretion change the fees in the Price List for HMS Hub, including recurring subscription fees, from time to time and will communicate any price changes to the Customer in advance and, if applicable, how to accept such changes. Subject to applicable law, the Customer accepts the price change by continuing to use HMS Hub after the price change takes effect.
- 4.5 If any invoiced fees are not received from the Customer on the due date, then, without limiting HMS' other rights and remedies, HMS shall be entitled to late payment interest on the overdue amount at the interest rate provided under applicable law, from the date such payment was due until payment is received.
- 4.6 In the event of late payment of fees for HMS Hub, HMS may, at its own discretion and without limiting its other rights and remedies, discontinue the Customer's access to HMS Hub until such amounts are settled.
- 4.7 The fees are exclusive of all taxes, duties, levies or similar governmental assessments of any kind. The Customer is solely responsible for paying all taxes and such other assessments associated with the Customer's purchases under this Agreement.
- 4.8 HMS may in the future offer the Customer a combined offering regarding a subscription model involving hardware (such as HMS gateways) and HMS Hub, pursuant to a separate addendum to be agreed between the parties and to form part of this Agreement.

5. CUSTOMER DATA AND DATA PROTECTION

- 5.1 The Customer Data is and will remain the property of the Customer at all times. Except as required by applicable law, HMS will (i) not use the Customer Data for any other purpose than directly in relation to the performance of its obligations under this Agreement, provided, however, that HMS can use the Customer Data, including the retention thereof following the termination of this Agreement, for research, benchmarking and developmental work, as long as HMS otherwise complies with the terms of this Agreement and the Privacy Policy, (ii) not sell, exploit, assign rights in or otherwise dispose of any Customer Data and (iii) not make any Customer Data available to any third parties except for HMS' subcontractors and then only to the extent necessary to enable the subcontractor to perform its part of HMS' obligations under this Agreement.
- 5.2 HMS will establish and maintain reasonable administrative, physical and technical safeguards against the destruction, loss or alteration of any Customer Data in the control of HMS.
- 5.3 HMS Hub is physically hosted within the European Union.
- 5.4 Upon Written request by the Customer made within thirty (30) days after the date of termination of this Agreement, HMS shall, at the option and reasonable expense of the Customer, either return a copy of the Customer Data in a suitable format or destroy or delete

the Customer Data. However, HMS shall be entitled to retain a copy of the Customer Data to the extent required for the purposes set out in clause 5.1.

- 5.5 HMS is committed to respect privacy and to ensure lawful processing of personal data. HMS' processing of any personal data within the scope of this Agreement shall be subject to the Privacy Policy.

6. PARTICIPATION IN PROMOTIONS

The Customer acknowledges that the inclusion of links, promotions and/or advertisements of Advertisers in HMS Hub does not constitute HMS' endorsement of the Advertisers or their websites or offerings. HMS has no control over the content of the Advertisers' websites or the collection and usage of personal information at or by those websites and therefore cannot assume any liability whatsoever in relation to the Customer for any interaction with or transactions on such websites. The Customer may enter into correspondence with or participate in promotions of the Advertisers. Any correspondence or promotions, including the delivery of and payment for goods and services, and any other conditions, warranties or representations associated with such correspondence, promotions or transactions are solely between the Customer and the Advertiser. HMS assumes no liability, obligation or responsibility for any part of such correspondence, promotion or transaction.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 Each party's Intellectual Property Rights shall remain the property of the respective party and the other party shall have no right to nor interest therein. Nothing in this Agreement constitutes a transfer, assignment or grant of any ownership rights in any Intellectual Property Rights.

- 7.2 All Intellectual Property Rights existing in HMS Hub or the Specification shall remain the Property of HMS. All Intellectual Property Rights existing in the Customer Data shall remain the property of the Customer.

8. CONFIDENTIALITY

- 8.1 The Receiving Party receiving Confidential Information from the Disclosing Party undertakes to hold the Confidential Information strictly confidential and to not disclose such Confidential Information to any third party, except as provided for in this Agreement.

- 8.2 The Receiving Party may only use the Confidential Information within the scope of the purpose of this Agreement and shall limit access to the Confidential Information of the Disclosing Party on a need-to-know basis.

- 8.3 This Agreement shall not prevent the disclosure of Confidential Information to the extent such disclosure is mandatory under provisions of mandatory legislation or stock market regulations. The Receiving Party shall, to the extent permitted by mandatory legislation or stock market regulations, notify the Disclosing Party of any required disclosure and make its best reasonable efforts to reduce any damage to the Disclosing Party resulting from such mandatory disclosure.

- 8.4 Subject to what may otherwise be provided for in this Agreement, following the termination of this Agreement, the Receiving Party shall return or delete any and all Confidential

Information and not retain any copy, duplicate, extract or reproduction in whole or in part. However, the Receiving Party shall be entitled to retain copies of the Confidential Information to the extent required by compulsory legislation, stock market regulations or other applicable rules (such as professional standards) and copies of the Confidential Information resulting from automatic back-up procedures or archival copies not accessible day-to-day and which are generated in the ordinary course.

9. TRADE COMPLIANCE

- 9.1 The Customer represents and warrants that (i) the Customer and its Users shall comply with all applicable laws and regulations, including anti-bribery laws, trade and economic sanctions and export control laws, (ii) none of the Customer, its affiliates and other representatives is or is owned or controlled by any person targeted under the sanctions or export controls of the UN, US, UK, EU or any other relevant government, (iii) the Customer and its Users will not engage in any business involving a sanctioned person and (iv) the Customer will immediately inform HMS of any suspected or alleged breach of the foregoing. Following any reasonably suspected breach, HMS has the discretionary right to suspend the Customer's access to and use of HMS Hub or terminate this Agreement.
- 9.2 Notwithstanding any provision of this Agreement to the contrary, HMS shall not be obliged to take any action under this Agreement if it believes in good faith that such action may constitute a violation, or contribute to a violation, of any anti-bribery laws, trade and/or economic sanctions or export control laws.

10. WARRANTIES AND DISCLAIMERS

- 10.1 Subject to the terms set out herein, HMS warrants to the Customer during the term of this Agreement that HMS Hub will comply substantially with the functionality described in the Specification and that such functionality shall substantially be maintained in subsequent modifications, updates and/or upgrades of HMS Hub in accordance with clause 2.3. The Customer's sole and exclusive remedy for HMS' breach of this warranty shall be that HMS shall use commercially reasonable efforts to correct such errors or modify HMS Hub to achieve the intended functionality within a reasonable period of time. Notwithstanding the foregoing, HMS shall have no obligation with respect to any warranty claim (i) unless notified of such claim within fifteen (15) Business Days of the first material functionality problem or (ii) where any alleged non-conformity is due to the Customer's error as reasonably determined by HMS, following amicable discussions with the Customer. For the avoidance of any doubt, no warranties are provided with respect to that HMS Hub will be free of non-material errors, bugs or interruptions, or that all such errors may be corrected.
- 10.2 Except as otherwise is stated in clause 10.1, HMS Hub is provided on an as-is basis and HMS does not represent that the Customer's use of HMS Hub will be secure, timely, uninterrupted or error-free, or that HMS Hub will meet the Customer's requirements or that all errors in HMS Hub will be corrected or that HMS Hub will be free of viruses or other harmful components or that HMS Hub will operate in combination with other hardware, software, systems or data not provided by HMS or the operation of HMS Hub will at all times be secure or that HMS will at all times be able to prevent third parties from accessing or destroying Customer Data or the Customer's Confidential Information. The warranty stated in clause 10.1 is the sole and exclusive warranty offered by HMS. There are no other warranties or conditions, express or implied, including without limitation, those of merchantability or fitness for a particular purpose. The Customer assumes all responsibility

for determining whether HMS Hub or the information generated thereby is accurate or sufficient for the Customer's purpose.

11. INDEMNIFICATION

The Customer will defend, indemnify and hold HMS harmless from and against any claim, demand, suit or proceeding brought against HMS by a third party (i) relating to or arising from the Customer's use of HMS Hub in violation of this Agreement, (ii) relating to or arising from HMS' permitted use of the Customer Data or (iii) the Customer's breach of any third party terms and conditions (which relevant parts of such terms and conditions, for the purposes of this clause 11, are incorporated herein by reference) in connection with or relating to HMS Hub, provided that HMS (a) promptly gives the Customer Written notice of the claim, (b) gives the Customer the sole control of the defence and settlement of the claim and (c) provides the Customer with all reasonable assistance, at the Customer's expense.

12. LIMITATION OF LIABILITY

12.1 Each party's aggregate liability arising out of or relating to this Agreement, howsoever arising, shall not exceed the total amount of fees paid by the Customer to HMS for the Customer's access to and use of HMS Hub during the twelve (12) month period preceding the date on which the event giving rise to the claim occurred. If the event giving rise to the claim occurred before the twelve (12) month period has elapsed, the limitation shall instead be calculated as the average monthly fees paid up until such point in time by the Customer for the Customer's access to and use of HMS Hub multiplied by twelve (12). The foregoing limitation of liability shall not apply in relation to claims under clauses 7 (Intellectual Property Rights), 8 (Confidentiality) and 11 (Indemnification) of this Agreement or if a party's liability results from gross negligence or wilful misconduct.

12.2 Neither party shall have any liability for any loss of business, revenue, profits, production, goodwill, use, data (including Customer Data), anticipated savings or other economic advantage (irrespective of if such damage is direct or indirect) as well as any consequential or indirect damages. The foregoing limitation of liability shall not apply in relation to claims under clauses 7 (Intellectual Property Rights), 8 (Confidentiality) and 11 (Indemnification) of this Agreement or if a party's liability results from gross negligence or wilful misconduct.

13. TERM AND TERMINATION

13.1 This Agreement will continue to apply until terminated by either HMS or the Customer. HMS may terminate the Agreement or suspend a User's access to HMS Hub in the event of any actual or suspected unauthorised use of HMS Hub or otherwise due to a breach or a reasonably anticipated breach of this Agreement, as determined by HMS. The Customer may terminate this Agreement by terminating the relevant Customer account, in accordance with the instructions in the Specification. However, the termination of the Customer Administrator Account will result in the automatic suspension or termination of all Users' accounts, unless a new Customer Administrator Account for the Customer is designated within a reasonable time. The Customer acknowledges and agrees that HMS shall have no obligation to refund any amounts already paid by the Customer in the event of termination of this Agreement, howsoever occasioned.

- 13.2 Following the termination of this Agreement, howsoever occasioned, all rights granted to the Customer in relation to HMS Hub will immediately cease and the Customer shall stop using HMS Hub.

14. MISCELLANEOUS

- 14.1 Notices under this Agreement shall be given in Written form and be provided to the other party pursuant to the contact information stated in HMS Hub and pertaining to the Customer and HMS, respectively.
- 14.2 The Customer may not, wholly or partly, assign, pledge or otherwise dispose of its rights and/or obligations (including by way of mergers and demergers completed in accordance with applicable law) under this Agreement without HMS' prior Written consent. HMS may without prior notice to the Customer, wholly or partly, assign its rights and/or obligations to an affiliate.
- 14.3 English language terms used in this Agreement shall be interpreted solely with reference to legal usage, traditions and the laws of Sweden and not with reference to the legal usage, traditions or laws of any other country.
- 14.4 Neither party shall be deprived of any right under this Agreement because of its failure to exercise any right under this Agreement or failure to notify the infringing party of a breach in connection with the Agreement. Notwithstanding the foregoing, rules on complaints and limitation periods, such as in clause 10.1, shall apply.
- 14.5 Terms which by their nature extend beyond the term of this Agreement shall survive the termination of this Agreement.

15. GOVERNING LAW AND DISPUTE RESOLUTION

- 15.1 This Agreement shall be governed by the substantive laws of Sweden, without regard to its conflict of laws rules.
- 15.2 Any dispute, controversy or claim arising out of or in connection with this Agreement, or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Arbitration Rules of the Arbitration Institute of the SCC. The Arbitration Rules by the SCC shall apply, unless the SCC in its discretion determines, taking into account the complexity of the case, the amount in dispute and other circumstances, that Rules for Expedited Arbitrations shall apply. In the former case, the Arbitral Tribunal shall be composed of three (3) arbitrators.
- 15.3 The seat of arbitration shall be Stockholm, Sweden. The language to be used in the arbitral proceedings shall be English. The confidentiality undertaking in this Agreement shall, *mutatis mutandis*, apply to the arbitral proceedings, the arbitral award and the fact that arbitration has been initiated.

If you have any questions regarding HMS Hub or the Agreement, please contact us by visiting the [Contact section](#) on our website.

Contracting Entity: HMS Industrial Networks AB

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