

End User License Agreement

Updated: 01st January, 2017

Please read this Aphasys, the Cloud based Technology lays down End User License Agreement (hereafter referred to as EULA) carefully before signing up for an Account, as it sets out the terms and conditions upon which we license our Software for use.

By ticking "I accept Aphasys, the Cloud based technology lays down End User License Agreement (EULA)" when you first sign up for an Account, you agree to be legally bound by the terms and conditions of this EULA as they may be modified and posted on our website from time to time. You further agree that your employees or any person you authorise to use the Software will also be legally bound by the terms and conditions of this EULA.

If you do not agree to this EULA, you must not apply tick the EULA agreement tick box during sign up and you must not use the Software for any purpose whatsoever.

This EULA is subject to change without prior notice – you will be notified via Notifications within the Software of changes but users should in any event ensure they check the EULA each time they log on.

1. Definitions and interpretation

1.1 In this EULA:

"Account" means an individual company record as registered by the Licensee;

"Company email address" means the email address used to sign-up for the system by the Licensee;

"Computer" means a desktop, notebook, net book, tablet, mobile or similar endpoint device owned by and in the control of the Licensee;

"Documentation" means the documentation concerning the Software supplied by the Licensor or by the Software supplier to the Licensee with the Software;

"Effective Date" means the date when the Licensee agrees to the terms and conditions of this EULA by signing up for an account;

"EULA" means this end user license agreement (including the preamble) published at www.aphusys.com/eula, and any amendments made to it from time to time;

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of or problems with the internet or a part of the internet, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights (and the intellectual property rights referred to above include but are not limited to copyright and related rights, database rights, computer data, generic rights, confidential information, trade secrets, registered designs, moral rights, know-how,

business names and logos, trade names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

“**Licensee**”, “you”, “your” means the licensee of the Software under this EULA;

“**Licensor**”, “we”, “us”, “our” means **Husys Consulting Limited**, Husys House, # 1-8-505/E/D/A, Prakash Nagar, Begumpet, Hyderabad – 500016, Telangana, India; and

“**Software**” means Aphasys, the Cloud based Technology – Application for Human Synergies;

1.2 The Clause headings do not affect the interpretation of this EULA.

2. **Term of EULA**

This EULA will come into force on the Effective Date and will continue in force indefinitely, unless and until terminated in accordance with Clause 8.

3. **License**

3.1 The Licensee may only use the Software for the Licensee’s business purposes and in accordance with the provisions of this Clause 3.

3.2 Subject to the payment by the Licensee of any relevant charges and fees in respect of the Software license (if applicable), and the Licensee’s compliance with Clause 3.3 and the other provisions of this EULA, the Licensor grants to the Licensee a non-exclusive non-transferable license to use the Software during the term of this EULA. Such license is for company use and is subjected to limits indicated for User and or Employee Records count and packages/modules subscribed for.

3.3 The Licensee must not:

- (a) copy or reproduce the Software or Documentation or any part of the Software or Documentation other than in accordance with the license granted in this Clause 3;
- (b) sell, resell, rent, lease, loan, supply, distribute, redistribute, publish or re-publish the Software or Documentation or any part of the Software or Documentation without prior written consent from the Licensor;
- (c) modify, alter, adapt, translate or edit, or create derivative works of, the Software or Documentation or any part of the Software or Documentation;
- (d) reverse engineer, decompile, disassemble the Software or Documentation or any part of the Software or Documentation;
- (e) use the Software other than in accordance with the Documentation; or
- (f) circumvent or remove or attempt to circumvent or remove the technological measures applied to the Software and Documentation for the purposes of preventing unauthorised use, providing that nothing in

this Clause 3.3 will prohibit or restrict the Licensee or any other person from doing any act expressly permitted by applicable law.

3.4 All Intellectual Property Rights and title in the Software and Documentation are and will remain, as between the parties, the property of the Licensor and no interest or ownership in the Software, Documentation and the Intellectual Property Rights or otherwise is conveyed to the Licensee under this EULA.

4. Other Users

4.1 The Licensee may permit any person to exercise the rights granted by the Licensor to the Licensee under Clause 3.2, subject always to the restrictions set out in Clause 3.

4.2 The Licensee must ensure that any person using the Software and/or Documentation in accordance with Clause 4.1 is made aware of, and agrees to, the terms of this EULA and the Licensee shall be liable to the Licensor for any breach of this EULA by such persons using or accessing the Software and Documentation, as if such breach had been caused by the Licensee itself.

5. Support

5.1 The Licensor will provide to the Licensee email support & Online support for the purpose of resolving issues with the Software raised by the Licensee acting reasonably.

5.2 The Licensee acknowledges that:

- (a) the Licensor's obligation under Clause 5.1 is subject to such limits (as to time spent in relation to an issue and in relation to the Licensee in aggregate) as the Licensor may determine from time to time;
- (b) the Licensor's sole obligation under Clause 5.1 is to make reasonable endeavours to resolve issues raised by the Licensee;
- (c) support is provided by email or ticket & Online Support only unless expressly agreed in writing between the Licensor and Licensee;
- (d) the Licensor does not warrant or represent that issues raised will be solved by means of the support services; and
- (e) the Licensor will not provide any on-site support under this EULA.

5.3 The Licensor may subcontract any of its obligations under this Clause 5 to any third party and the Licensee acknowledges and agrees that such subcontractors may be located outside of the EEA.

6. Limited warranties

6.1 The Licensee warrants to the Licensor & Licensor warrants to Licensee:

- (a) that it has the legal right and authority to enter into and perform its obligations under this EULA;

- (b) it shall respect all applicable laws and regulations, governmental orders and court orders, which relate to this EULA;
- (c) it rightfully owns the necessary user rights, copyrights and ancillary copyrights and permits required for it to fulfill its obligations under this EULA. (include in 6.2)

6.2 The Licensor warrants to the Licensee:

- (a) that it has the legal right and authority to enter into and perform its obligations under this EULA;
- (b) that the services related to provision of the Software shall be performed with reasonable skill and care and in a professional manner in accordance with good industry practice;
- (c) the Software will operate to materially provide the facilities and functions implemented by the Licensor.

6.3 All warranties and conditions, whether express or implied by statute, common law or otherwise (including but not limited to satisfactory quality and fitness for purpose), are hereby excluded to the fullest extent permitted by law. No warranty is made regarding the results of usage of the Software or that the functionality of the Software will meet the requirements of the Licensee or that the Software will operate uninterrupted or error free. This Clause 6.3 shall survive the termination of this EULA.

7. **Limitations and exclusions of liability**

7.1 Nothing in the EULA will: What is the meaning of this clause?

- (a) limit or exclude the liability of a party for death or personal injury resulting from negligence;
- (b) limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;
- (c) limit any liability of a party in any way that is not permitted under applicable law; or
- (d) exclude any liability of a party that may not be excluded under applicable law, and, if you are a consumer, any statutory rights which you have, which cannot be excluded or limited, will not be affected by the EULA.

7.2 The limitations and exclusions of liability set out in this Clause 7 and elsewhere in the EULA:

- (a) are subject to Clause 7.1; and
- (b) govern all liabilities arising under the EULA or in relation to the subject matter of the EULA, including all liabilities or indemnities arising in contract, tort or otherwise.

7.3 The Licensor will not be liable to the Licensee for any losses arising out of a Force Majeure Event.

7.4 The Licensor will not be liable to the Licensee in respect of any business losses, such as loss of or damage to profits, income, revenue, use, production, anticipated savings, business, contracts, commercial opportunities or goodwill.

7.5 The Licensor will not be liable to the Licensee in respect of any loss or corruption of any data, database or software.

- 7.6 The Licensor will not be liable to the Licensee in respect of any special, indirect or consequential loss or damage.
- 7.7 The Licensor's aggregate liability to the Licensee will not exceed the greater of the net total of the amount the Licensee has paid the Licensor in the previous 12 months or Rs.10/-.

8. Termination

Should the Licensee wish to cancel their subscription or terminate their Account, they can do so within the Software without needing to contact the Licensor. The ability to perform this task is restricted to the main company administrator and cannot be undone.

The minimum term for the Licensee is one calendar year from the date of the first invoice. The EULA cannot be terminated during the minimum term for convenience.

Should the Licensee choose to cancel or downgrade their subscription in the middle of a billing cycle, there will be no refunds or credits made for the remainder of the term of the billing cycle.

Either party may terminate this EULA immediately by the other party written notice of termination if:

- (a) the Licensee or any employee of the Licensee or person authorised by the Licensee to use the Software and/or Documentation breaches any provision of this EULA;
- (b) the Licensee: (i) is dissolved; (ii) ceases to conduct all (or substantially all) of its business; (iii) is or becomes unable to pay its debts as they fall due; (iv) is or becomes insolvent or is declared insolvent; or (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
- (c) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the Licensee;
- (d) an order is made for the winding up of the Licensee, or the Licensee passes a resolution for its winding up; or
- (e) the Licensee dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.

What about Licensor liabilities under the above circumstances.....

9. Effects of termination

- 9.1 Upon termination all the provisions of this EULA will cease to have effect, save that the following provisions will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1, 7, 8, 9 10, 11 and 12. The Licensor shall cease providing the Software and Documentation to the Licensee and all licenses granted hereunder shall terminate. It shall only have impact on the client to client basis...
- 9.2 Termination of this EULA will not affect either party's accrued rights and liabilities.

9.3 Save as expressly provided in this EULA, the Licensee will not be entitled to any refund upon the termination of this EULA.

9.4 If the Licensee requires their data to be made available after termination in any format other than the standard format offered via the Software, the Licensor reserves the right to charge a reasonable fee to make this data available. Prior to termination, Licensee can export their core data via the Software as frequently as required at no charge.

10. Confidential Information

10.1 Each party may use the confidential information of the other party only for the purposes of this EULA and must keep confidential all confidential information of the other party, except to the extent (if any) the recipient of any confidential information is required by law to disclose the confidential information.

10.2 Either party may disclose the confidential information of the other party to those of its employees and agents who have a need to know the confidential information for the purposes of this EULA but only if the employee or agent executes a confidentiality undertaking in a form approved by the other party.

11. Data Protection

11.1 Each party undertakes to comply with its obligations under relevant applicable data protection laws, principles and agreements. To the extent that personal data is processed using the Software, the parties acknowledge that the Licensor is a data processor and the Licensee is a data controller and the parties shall comply with their respective statutory data protection obligations. The Licensor agrees that it will only process personal data on behalf of, and in the name of, the Licensee.

11.2 The Licensee shall ensure that the personal data, which it supplies or discloses to the Licensor, has been obtained fairly and lawfully and that it will obtain all necessary approvals from persons whose data is being processed and registrations with authorities to permit the Licensor to transfer personal data to third parties pursuant to its obligations under this EULA.

11.3 The Licensor confirms that it merely acts as a data processor, will only process data in accordance with the instructions of the data controller; and has taken, as well as its subcontractors, licensors and hosts, sufficient technical and organizational measures to protect against unauthorized or unlawful processing of personal data and against accidental loss or destruction of, or damage to personal data, having regard to the state of technological development and cost of implementing any measures, to ensure a level of security appropriate to the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the personal data to be protected.

12. General

12.1 No breach of any provision of this EULA will be waived except with the express written consent of the party not in breach.

- 12.2 If a Clause of this EULA is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of this EULA will continue in effect. If any unlawful and/or unenforceable Clause would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the Clause will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant Clause will be deemed to be deleted).
- 12.3 The Licensor may freely assign this EULA and/or its rights and/or obligations under this EULA without the Licensee's consent. Save as expressly provided in this EULA, the Licensee must not assign, transfer, charge, license or otherwise dispose of or deal in this EULA and/or any its rights and/or obligations under this EULA. Licensor is prohibited to assign in any manner under this EULA without consent of Licensee for.....
- 12.4 This EULA is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation, or settlement under or relating to this EULA are not subject to the consent of any third party.
- 12.5 This EULA constitutes the entire agreement and understanding of the parties in relation to the subject matter of this EULA, and supersedes all previous agreements, arrangements and understandings between the parties relating to the subject matter of this EULA. Subject to Clause 7.1, each party acknowledges that no representations or promises not expressly contained in this EULA have been made by or on behalf of the other party.
- 12.6 By using this service, you both the parties give us both the parties explicit permission to contact you/each other via email to the registered Company email address for the purposes of, but not limited to, product updates, feature releases, direct marketing, market research and other general communications. You can opt out of this at any time through the Software.
- 12.7 This EULA will be governed by and construed in accordance with English law; and the courts of Hyderabad, Telangana, India will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this EULA.