

## Terms and Conditions LIFTINSIGHT – 23.01.2020

### Terms and Conditions

#### 1. General

- 1.1. These Terms and Conditions ("**Terms and Conditions**") apply to the access to and use of Liftmanager portal and related hardware and software components ("**Service**") owned, operated and delivered by Liftinzicht B.V., Emmy van Leersumhof 12, 3059 LT Rotterdam, The Netherlands ("**Liftinzicht**") registered at the Rotterdam Chamber of Commerce under number 50116762. VAT number: NL8225.60.094.B.01.
- 1.2. Access to and use of the Service by the customer ("**Customer**" or "**you**") is subject to Customer's timely payment of the applicable fees ("**Fees**") and to these Terms and Conditions.
- 1.3. Please read these Terms and Conditions carefully before placing your order on the website of Liftinzicht for your subscription for accessing and using the Service. You indicate your acceptance of and you agree to be bound by these Terms and Conditions by placing your order on the website of Liftinzicht for your subscription for accessing and using the Service. If you do not accept or agree to these Terms and Conditions, do not an place for accessing and using the Service.

#### 2. Access to and use of the Service

- 2.1. Subject to Customer's compliance with these Terms and Conditions and payment of the Fees, Liftinzicht shall make the Service available to Customer for the number of licenses and the term in accordance with and as specified in the online order form.
- 2.2. The Service is intended solely for the purpose of monitoring the lifts managed or operated by the customer (the "**Permitted Purpose**").
- 2.3. Unless Customer uses the Services for its end-customers, Customer is not entitled to (a) rent, lend, lease, assign, sub-license, resell, redistribute or otherwise make available, alter, modify or translate the Service or any copy of it in any form to any third party nor create any derivative works from it; (b) remove from or change in the Service any designation concerning copyrights, trademarks or other intellectual and/or industrial property rights, including any indications concerning the confidential nature of the Service (c) decompile, reverse engineer, disassemble, or seek to reconstruct or discover any humanly readable form of code of the Service (d) use the Service to operate a services bureau or to provide hosting services, use the Service to operate as an outsourcer, use the Service in a time-sharing arrangement; (e) attempt to disable or circumvent any of the mechanisms or restrictions regarding the number of licenses within the Service.
- 2.4. Liftinzicht is not a party in granting access rights to the end customer and / or third parties to whom the user provides access rights. The management rights belong to the person who first creates an installation in the application. The



granting and withdrawal of access rights is the responsibility between the parties in which Liftinzicht does not have a role. When revoking all access rights for an installation, the management rights will expire at Liftinzicht.

- 2.5. If Customer uses the Services for its end-customers, Customer may customize the Service for each end-customer and grant such an end-customer a right to access the Service and to consult and /or retrieve the information processed with the Service for that end-customer.
- 2.6. Liftinzicht shall use commercially reasonable efforts to ensure that the Service is available 24 hours per day and that Customer and its users are able to access and use the Service.
- 2.7. Liftinzicht will provide e-mail notification to Customer prior to scheduled maintenance windows and as soon as possible in the event of emergency maintenance.
- 2.8. Liftinzicht will provide support by e-mail for technical questions and assistance regarding the use of the Service. If ordered, Customer may request support by telephone between 09:00 and 17.00 hours (CET) on working days excluding public holidays. The e-mail address and phone numbers for support are specified at the website of Liftinzicht.
- 2.9. Liftinzicht shall use commercially reasonable efforts to respond during normal business hours to incidents that have been reported by Customer.
- 2.10. Liftinzicht shall have no obligation to provide the Service to the extent and for the period that Liftinzicht is prevented from doing so by reason of any cause beyond its reasonable control, including without limitation the inability to use or the failure of any third-party telecommunications carrier or other services.
- 2.11. Liftinzicht reserves the right to change, modify, add, or remove parts of the Service at any time at its discretion and without notice.
- 2.12. Liftinzicht may monitor and control the use of the Service in accordance with the terms of these Terms and Conditions.
- 2.13. Liftinzicht is entitled to block access to the Service at any time, particularly if Customer or any of its users violate any of the terms of these Terms and Conditions.
- 2.14. If Customer chooses to provide Liftinzicht with ideas or suggestions regarding the Service, Customer agrees that Liftinzicht is free to use any such ideas and suggestions for any purpose, including, without limitation, developing, improving and marketing the Service, without any liability or payment of any kind to Customer.

### **3. Customer responsibilities**

- 3.1. Customer shall towards Liftinzicht be solely responsible for (a) creating accounts for the users for accessing and using the Service, (b) any and all actions of the Users when using the Service and (c) taking all possible actions and measures to prevent any unauthorized use of the Service.
- 3.2. Customer will and will procure that its end-customer will use the Service solely for the Permitted Purpose and Customer shall not use or permit anyone else to use the Service (a) to send, receive or post any material which is offensive, of



an indecent, obscene or menacing character, blasphemous or defamatory of any person, in breach of confidence, intellectual property rights, privacy rights or any other third-party rights; (b) to furnish false data including but not limited to false names, addresses and contact details; (c) to send unsolicited mail messages, 'junk mail' or other advertising material, malicious email, including but not limited to 'mail-bombing'; (d) to intercept or attempt to intercept any communications transmitted over the Service; (e) to circumvent or attempt to circumvent any security of the Service; (f) to access data not intended for it, or to log on to a network, server or an account that it is not expressly authorised to access or to log on; (g) to upload or distribute viruses or other forms of malware or spyware; or (h) in any manner that in the opinion of Liftinzicht (i) negatively affects the use or the functioning of the Service; (ii) is not in accordance with general accepted use of similar services and networks and/or applicable laws and regulations; (iii) is or may be disadvantageous, harmful, offensive, inconvenient or in any way wrongful to Liftinzicht, other users of the Service or third parties; and/or (iv) otherwise causes annoyance or inconvenience.

- 3.3. Customer is solely responsible for the use of the Service and any data made available on or through the Service. The data made available on or through the Service may not be accurate, up to date, complete, error free and do not constitute any advice regarding the maintenance of any lifts and does not replace or prevail over any instructions of the manufacturer of the lifts.
- 3.4. Customer should apply its own judgement in making any use of the Service and any data made available on or through the Service. Any conclusions, decisions or actions based upon such data are at Customer's own risk and account.

#### **4. Delivery and use of hardware and software components**

- 4.1. Liftinzicht shall deliver the hardware and software components to Customer at the delivery address and within the delivery term as specified in the online order form.
- 4.2. Following receipt of the hardware and software components at Customer's delivery address, Customer assumes full responsibility for, and in the event of loss or damage to the hardware and software components, shall pay the replacement cost thereof, plus any shipping and handling charges. Customer will adequately insure the hardware and software components against loss or damage while the hardware and software components are the possession or control of Customer in an amount no less than the full list price of the sensors. Customer will not transfer, sell, assign, sublicense, pledge, or otherwise dispose of, encumber or suffer a lien or encumbrance upon or against the hardware and software components. Title to the hardware and software components shall remain with Liftinzicht.
- 4.3. Customer shall (a) use the hardware and software components solely for the Permitted Purpose; (b) install, operate and maintain the hardware and software components in accordance with the instructions delivered by Liftinzicht together with the hardware and software components; and (c) not damage or otherwise impair the physical condition of the hardware and software components, ordinary wear and tear excepted.



- 4.4. Customer shall indemnify and hold Liftinzicht harmless against any and all damages resulting from Customer's (including affiliates, agents or other third party's) negligent use or intentional misuse of the hardware and software components; provided, however, that Customer shall have no obligation to indemnify in the event that any such damage is a result of Liftinzicht's negligence or intentional misconduct.
- 4.5. The hardware and software components are delivered "as-is". In the event of any defect or malfunction of a hardware components, Customer will notify Liftinzicht thereof and will return the defective or malfunctioning hardware component to Liftinzicht in accordance with the return policy of Liftinzicht referred to in the online order form and on the website of Liftinzicht.
- 4.6. Upon receipt of the defective or malfunctioning hardware component, Liftinzicht will replace the defective or malfunctioning hardware component by sending a substantially similar or improved component to the address as specified in the return form..

## **5. Log-in details / Data**

- 5.1. In order to use the Liftmanager portal, a user has to login with its log-in details (username, mobile number, e-mail address and password) uploaded and/or created by the user upon first registration. User is responsible for safeguarding its log-in details and for any activities and actions taking place under its account. User must keep its log-in details confidential and not share its log-in details with any person or third party. User must notify Liftinzicht immediately if it becomes aware of any unauthorised use of its log-in details or any other breach of security.
- 5.2. Liftinzicht may use the username, mobile number and e-mail address uploaded by the user ("**User Contact Information**") as reasonably needed to perform its obligations and activities permitted and/or required to provide the Service and to contact a user. Liftinzicht shall be considered a data controller with respect to the User Contact Information and shall use the User Contact Information in accordance with its privacy statement available at <https://www.liftinsight.com/privacy-statement/>.
- 5.3. All copyrights, database rights and all other intellectual property regarding the data collected by the hardware components in use by Customer and processed and made available on or though the Service will be owned by Customer.
- 5.4. Customer hereby grants Liftinzicht a perpetual, unlimited, royalty-free, worldwide, non-exclusive, irrevocable, transferable license to copy, reproduce, publish, bundle, distribute, market, create derivative works of, modify, translate, transmit, sub-license, export, merge, transfer, share, or otherwise make available the anonymized data collected by the hardware components in use by Customer and processed and made available on or though the Service, User Content for statistical and marketing purposes, for further development and optimization of the Service and top provide Customers with (general) recommendations and suggestions. Liftinzicht will anonymize such data in such a way that it is impossible to retrieve the source of such data.



- 5.5. Customer has the ability to access its data at any time during the term of the subscription set forth in the online order form, unless earlier terminated. Customer may export and retrieve its data during the term of the subscription.

## **6. Fees and payment**

- 6.1. For using the Service Customer shall pay Liftinzicht the applicable Fees in advance and in recurring instalments as specified in the online order form. The first instalment shall be due and payable by Customer to Liftinzicht at the date of completing the online order form.
- 6.2. In the event Customer wishes to increase the number of components and/or licenses, Customer may order the additional components and/or licenses by placing an online order on the Website of Liftinzicht and paying the additional Fees as specified in the online order form.
- 6.3. In the event Customer wishes to decrease the number of components and/or licenses, Customer shall notify Liftinzicht thereof and Liftinzicht will make an offer with a recalculation of the recurring instalments based on the decreased number and instructions for returning the components that are out of use. If Customer accepts the offer, it will return the components that are out of use in accordance with the instructions in the offer.
- 6.4. All fees and any other charges are exclusive of local taxes and duties, are exclusive of VAT.
- 6.5. If Customer fails to pay an instalment, Liftinzicht is entitled to charge interest at the then current statutory commercial interest rate ex Section 6:119a of the Dutch Civil Code.
- 6.6. In the event of non-payment, Liftinzicht shall have the right to suspend or revoke Customer's right to use the Service until full payment has been made.
- 6.7. Liftinzicht may change the Fees for the Service annually on 1 January in accordance with the price index for business services as published from time to time by the CBS (Central Statistics Netherlands; CBS Consumer Price Index (CPI)) by sending a written notice with the new Fees to Customer and with a term of thirty (30) days.
- 6.8. Liftinzicht may furthermore change the Fees for the Services in the event a supplier or a telecoms provider changes its rates and/or terms and conditions.
- 6.9. If Customer's use of the Service exceeds the number of licenses specified in the online order form, the Customer will be charged an additional fee calculated in accordance with the then current list price of Liftinzicht.

## **7. Intellectual Property Rights**

- 7.1. All copyrights and all other intellectual property regarding the Service including the data shall remain solely vested in Liftinzicht or its licensors and shall not be assigned to Customer or any third party. Customer acknowledges these rights and shall refrain from any form of direct or indirect violation of these rights and shall not remove from or change in the Service any designation concerning copyrights, trademarks or other intellectual and / or industrial property rights, including any indications concerning the confidential nature of the Service.



- 7.2. Liftinzicht shall indemnify Customer against third party claims that the use of the Service infringes the intellectual property rights of such third party, provided that Customer (a) promptly notifies Liftinzicht in writing of any infringement or alleged infringement; (b) makes no admissions without Liftinzicht's prior written consent; (c) allows Liftinzicht to conduct any negotiations or litigation and/or settle any claim; and (d) provides Liftinzicht all reasonable assistance with regard to such claim.
- 7.3. Liftinzicht shall have no liability for any claim of infringement of any intellectual property rights that is based on: (i) the use or combination of the Service with software, hardware or other materials not approved by Liftinzicht, (ii) use of the Service in a manner other than that for which it was designed or contemplated; (iii) any modification of the Service made by Customer or a third party.
- 7.4. If Customer's use of the Service is or, to the judgment of Liftinzicht, could be prohibited by a judgement or an injunction, Liftinzicht shall, at its expense and option, promptly (i) replace or modify the Service or take other action so that the Service becomes non-infringing while maintaining the equivalent functionality; (ii) procure the right for Customer to continue using the Service; or (iii) terminate Customer's use of the Service and offer Customer a refund of the fees paid by Customer for the remaining term of the subscription.
- 7.5. Any further liability of Liftinzicht regarding the infringement of third party intellectual property rights is explicitly excluded.

## **8. Confidentiality**

- 8.1. The Service and the related documentation are and contain valuable Confidential Information of Liftinzicht. Confidential Information means non-public technical and non-technical information relating to the Service and documentation, including, without limitation, trade secret and proprietary information and any other information that has been designated as confidential and/or regarding which the Customer knows or should reasonably understand that such information is confidential.
- 8.2. Customer shall maintain strict confidentiality with respect to the Confidential Information shall not disclose the same to third parties without the prior written consent of Liftinzicht.
- 8.3. Customer shall take all necessary measures to safeguard the Confidential Information or any part or any copy thereof and to prevent the disclosure, use, copying, publication or dissemination of the same to a third party.
- 8.4. Customer agrees that, in the event any person or party seeks to obtain the Confidential Information of Liftinzicht through involving Customer by any means, including demand, discovery request or court order, Customer shall immediately notify Liftinzicht prior to disclosing the requested Confidential Information and will cooperate with each other in responding to such demand, discovery requests or court order so as to minimize the disclosure of such Confidential Information.
- 8.5. Customer shall impose the confidentiality obligations upon its respective employees and authorized third parties by written agreement and shall see to



it that its employees and authorized third parties shall at all times fully comply with such obligations.

## **9. Limited Warranty**

- 9.1. Subject to clause 9.4, Liftinzicht warrants to Customer that (a) the Services will substantially conform to the documentation available on the Services and that (b) for a period of five (5) years it will use commercially reasonable efforts to correct or to provide a workaround for any material non-conformance of the Service to the material specifications set forth in the documentation. Customer acknowledges that the Services are dependent of the services of third party suppliers including data communications providers and that Liftinzicht cannot accept any responsibility for any changes to the specifications and/or service levels of such services.
- 9.2. Liftinzicht does not guarantee that any error or other non-conformance can or will be corrected. Customer shall cooperate with Liftinzicht and provide Liftinzicht with all available information in written or electronic form so as to enable Liftinzicht to reproduce and attempt to correct such non-conformance of the Service. In the event that Liftinzicht is unable to correct a material non-conformance in the Service and if in Liftinzicht's opinion such correction is not reasonably feasible, Liftinzicht shall offer a refund of the fees paid by Customer for the remaining term of the subscription.
- 9.3. The obligations set forth in this clause 9 constitute Liftinzicht's exclusive obligations and liability and provide Customer's sole and exclusive recourse with respect to non-conformance of the Service. Liftinzicht does not warrant that the Service will operate error free or uninterrupted or that it will meet Customer's requirements. Except for the express provisions stated in this clause 9, the Service is provided "as is" and "without warranty", and Liftinzicht hereby specifically excludes and disclaims the implied warranties of merchantability and fitness for a particular use and all other warranties, whether express or implied by law, statute or course of dealing.
- 9.4. Liftinzicht will have no warranty obligations with respect to and is not liable for (i) malfunctions caused by the use or operation of the Service with any hardware, software or media not authorized by Liftinzicht; (ii) malfunctions resulting from operator errors or incorrect use of the Service; (iii) malfunctions attributable to the equipment and programs used in conjunction with the Service or to any other reason external to the Service or Liftinzicht; or (iv) if any instructions of Liftinzicht have not been followed.

## **10. Limitation of liability**

- 10.1. Liftinzicht shall be liable only for direct damages incurred by Customer caused by Liftinzicht's breach of the Terms and Conditions. Such liability shall be limited to the fees paid by Customer under these Terms of Conditions in the six (6) months prior to the event giving rise to the liability occurred. For the purpose of these Terms of Conditions "direct damages" shall mean exclusively and exhaustively all the costs of: (a) damage computer hardware and other material property, (b) reasonable expenses incurred by Customer in order to prevent or reduce damage that could be expected as a result of the event causing liability;



(c) reasonable expenses incurred by Customer in order to assess the cause of damage, the liability, the direct damage and the means of repair.

- 10.2. The liability of Liftinzicht to Customer for damages and any liability arising out of or in connection with these Terms of Conditions or in connection with the Service, on whatever ground, other than the direct damages mentioned above (including but not limited to, indirect or consequential damages, loss of turnover, loss of profit, loss of computer usage time, loss of revenues, loss of opportunities, and damage to, or loss of use of, data or programs) shall be excluded.
- 10.3. The limitations of liability set out in this clause 10 shall not apply if and insofar as damages are a result of intentional acts or omissions (*opzet*) or gross negligence (*grove schuld*) by Liftinzicht. Any action against Liftinzicht must be brought within twelve (12) months after the cause of action arises.
- 10.4. Customer shall (a) comply with all applicable laws and regulations in its use of the Service; (b) not misuse the Service in any way; and (c) not use the Service for any purpose or in any way that might harm, infringe the rights of or cause loss to any relevant party or any other person. Customer shall defend, indemnify and hold Liftinzicht harmless from and against any and all losses, expenses, damages, and liabilities arising from or out of any breach by Customer of these Terms of Conditions, other laws, regulations or restrictions.

## **11. Term and Termination**

- 11.1. Customer's subscription for the Service will start on the date and for the initial term specified in online order form. If no initial term is specified in the online order form, the initial term shall be one (1) year. After the initial term Customer's subscription will automatically renew for subsequent terms of one (1) year unless either party terminates the subscription at the end of the then current period by giving a three (3) months written notice.
- 11.2. Customer may terminate its subscription for the Services in whole or in part for its convenience at any time upon providing [two (2)] months written notice to Liftinzicht. Liftinzicht will not reimburse any Fees to Customer if the subscription is terminated for convenience.
- 11.3. If Customer (i) fails to comply with any of the provisions of these Terms and Conditions and has not remedied such failure within 14 days after having been notified by Liftinzicht identifying the failure, or (ii) commits an act of bankruptcy or has receiving order made against it or shall present its petition in bankruptcy or shall make an arrangement with or assignment in favour of its creditors or goes into liquidation, or (iii) is controlled by others than those exercising control at the time of concluding the subscription, Liftinzicht shall be entitled at its own discretion to terminate the subscription forthwith written notification to Customer.
- 11.4. In the event of expiration or termination of its subscription, Customer shall (a) immediately discontinue all use of the Service and (b) within fourteen (14) days following the date of termination return all hardware components in substantially similar condition as when it was received from Liftinzicht (reasonable) normal wear and tear excepted in accordance with the return





policy of Liftinzicht referred to in the online order form and on the website of Liftinzicht.

- 11.5. Expiration or termination of a subscription, for whatever reason shall not prejudice the provisions which by their nature must be deemed to survive expiration or termination, including but not limited to clauses regarding intellectual property, confidentiality, limitation of liability, applicable law and governing law and disputes.

## **12. Governing law and disputes**

- 12.1. These Terms and Conditions and all disputes arising from it will be governed by the laws of the Netherlands.
- 12.2. Parties shall use their best efforts to negotiate in good faith and settle amicably any dispute that may arise out of or relate to these Terms and Conditions or breach thereof. If the Parties cannot reach an amicable settlement, all disputes arising in connection with these Terms and Conditions shall be referred to the competent civil court of Rotterdam in the Netherlands.
- 12.3. Parties hereby agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to these Terms and Conditions.

## **13. General**

- 13.1. Severability and invalidity. If any term or provision of these Terms and Conditions shall be held illegal or unenforceable in whole or in part, under any rule of law, such term or provision or part shall to that extent be modified or deemed modified to conform to such rule of law. The validity and enforceability or the remainder of these Terms and Conditions shall not be affected.
- 13.2. Entire agreement. These Terms and Conditions together with the online order form apply constitute the entire agreement between Liftinzicht and Customer regarding the use of the Service and supersedes all prior agreements and understandings.
- 13.3. Order of precedence. If there is a conflict between the terms of these Terms and Conditions and the terms of an order form, the terms of these Terms and Conditions shall prevail.
- 13.4. No waiver. No delay or omission by either party to exercise any right or power under these Terms and Conditions or pursuant to applicable law shall impair such right or power or be construed as a waiver thereof. A waiver by any party of any covenant or breach shall not be construed to be a waiver of any other covenant or succeeding breach.
- 13.5. Changes to the Terms and Conditions. Liftinzicht may change the Terms and Conditions from time to time in its sole discretion. Customer's continued use of the Service after notification of any changes has been provided to Customer or posted on the Service and/or the website of Liftinzicht constitutes Customer's acceptance of such changes.
- 13.6. No assignment. Customer shall not assign or delegate or otherwise deal with all or any of its rights or obligations under these Terms and Conditions. Liftinzicht



shall have the right to assign or otherwise delegate all or any of its rights or obligations under these Terms and Conditions to any person or entity.

13.7. Publicity. Liftinzicht is entitled to use Customer's name, logo and trademark to refer to Customer as a customer of Liftinzicht along with other customers in marketing materials such as the Liftinzicht website, presentations and press releases.

13.8. The original English text applies to (translation) inconsistencies.

Liftinzicht B.V. – Terms and Conditions – January 2020