# METASPHERE PALETTE SERVICE TERMS OF USE

Please read these Terms of Use carefully before using the Metasphere Palette Application (the "Service") and associated services, previously called Metasphere Bureau Service.

The Service is operated by Metasphere Ltd, a company registered in England and Wales with company number 05673888 and whose registered address is Millfield, Dorking Road, Tadworth, Surrey, KT20 7TD ("Metasphere" and "we"/"us").

These Terms of Use set out the legally binding terms for your use of the Service. By accessing or using the Service in any manner, you agree to be bound by and become a party to these Terms of Use.

## Subscription period

These Terms of Use shall apply from activation of your subscription to the Service until that subscription is terminated in accordance with these Terms of Use.

The minimum subscription period for use of the Service is 12 months ("Initial Subscription Period"), thereafter your subscription will continue unless or until it is terminated by us or by you in accordance with these Terms of Use.

## Billing

We will charge you for each subscription that you have to the Service. A single subscription relates to a single remote telemetry unit (RTU) on the Service.

You will be invoiced for each subscription annually, in advance, for each calendar year (January – December).

The first invoice will be issued on activation of your subscription and this charge (the "Initial Charge") will cover the remaining months of that calendar year (on a pro-rata basis). Where activation of your subscription occurs part way through a month, the Initial Charge will be applied for the whole of the month in which the activation of your subscription occurred.

You will be charged and invoiced separately for any additional (optional) packages that you purchase within your subscription, such as alarm packages.

If you terminate your subscription to the Service, you shall be responsible for and agree to pay any and all outstanding charges owed to us. For the avoidance of doubt, termination of your subscription does not entitle you to any reimbursement of the annual charge already paid to us in respect of the Service in that calendar year.

When an invoice is delivered to you, you shall make payment us by no later than the specified payment due date. If payment is not received within 15 days of the invoice due date, the account will be suspended. If you subsequently make payment we will reactivate your account. Where an account has been suspended for more than 30 days that account may be terminated and all associated data permanently removed.

## Service

What's included:
- Access to Metasphere's data collection and visualisation service, called Palette
- Storage of historic time series values, events, and alarms for RTUs (with a valid subscription).
- Metasphere will provide up to 3 users per account.

## SMS and Email Notifications and Alarms

Where you have a subscription to the Service, you can purchase additional packages, such as alarm packages. If you purchase an alarm package, you will be entitled to receive a set number of alarm notifications. We may contact you to warn you that you are nearing the limit of your allocated number of alarm notifications. In this case, we will discuss with you the most appropriate way to proceed which may include reviewing your RTU configuration or you purchasing additional alarm packages.

We reserve the right to remove historic alarms from our current alarms database where they are considered to be dormant (i.e. where they have not been acted upon or acknowledged by the user within 30 days). Note that access to complete alarm history for each subscription is available through event reports.

## RTU firmware upgrades

We reserve the right to apply firmware upgrades to Metasphere RTUs which are dialling into the Service. These will normally be to resolve security issues or to improve product performance.

**RTU configuration and further configuration updates**

Initial RTU configuration is included in the Initial Charge. Subsequent configuration changes may be charged by us separately. If you require configuration changes to your RTU you are advised to request a configuration licence by contacting us directly.

**Reasonable Usage**

We reserve the right to make immediate and reasonable changes to RTUs that have been identified as having a detrimental effect on the system. If these changes relate to your RTU, we will notify you as soon as is possible.

**Automatic exports**

The automatic export package, if selected, is included in the Initial Charge. This package enables you to receive standard monthly reports on data collected from your RTU, including trend data. We reserve the right to charge for any subsequent configuration changes to these reports. Where we are hosting the exported files, they will be available for 30 days, and will be removed from the export server after this time.

**Inactive Units**

Where you notify us in writing that your RTU is no longer dialling into the Service but that you wish to continue using the Service to view historic data, we will reduce any subsequent annual charges relating to your subscription by 50% to reflect your reduced use of the Service.

**60 Day Trial Offer**

A 60-day free trial is available for new customers to evaluate the Service. This includes the following:

- 1 RTU per customer
- Up to 10 alarm notifications via SMS

If you wish to continue with the Service after the free trial period, the RTU set up fee will be covered in the Initial Charge. If you do not wish to continue with the Service after the free trial period, there will be no charge.

If the Service is not required and payment details are not provided at the end of the free trial period, all data associated with the account will be removed after 30 days. If at the end of the free trial period you require further RTUs please contact us as separate charges may apply for the setup of additional RTUs or outstations.

**Termination**

Subject to the Initial Subscription Period above, you can terminate your subscription to the Service and these Terms of Use by giving not less than 30 days' written notice to us ("Termination Notice"). Your subscription will then terminate at the end of the calendar year (January to December) in which you served your Termination Notice on us.

We may terminate your access to the Service, and these Terms of Use, with immediate effect on written notice to you if:

(i) your use of the Service breaches these Terms of Use or if you do anything which, in our reasonable opinion, damages or is likely to cause damage to the Service. This may result in the removal of all information and data associated with you; and

(ii) you fail to pay any amount due to use under these Terms of Use on the due date for payment and remain in default not less than 30 days after being notified by us to make such payment.

On termination of these Terms of Use the following provisions shall continue in force: billing; termination; data retention following termination; data ownership; limitation of liability; intellectual property; entire agreement; severance; and governing law.

**Data retention following termination**

User accounts will be retained for 30 days following termination to allow users to extract any data manually through the Service. Where requested, we can export all data as a chargeable service.

After the expiry of those 30 days we reserve the right to remove the data and any users related to that account.

**Limitation of Liability**

Except in the case of:

a) damage to, loss or destruction of real property or tangible personal property;
b) death or personal injury caused by negligence on the part of either party or any of its employees, agents or contractors;

c) any fraudulent act or omission of a party, negligence, or wilful misconduct including a wilful or deliberate breach of these Terms of Use;

d) the charges payable to us under these Terms of Use; and

e) any loss, damage, cost or expense that may not otherwise be limited or excluded by applicable law

the parties agree that the aggregate liability of each party to the other party in contract, tort (including negligence or breach of statutory duty, misrepresentation or otherwise) or for any other common law or statutory cause of action or otherwise arising by reason or in connection with these Terms of Use shall be limited to the total charges paid or payable in the calendar year in which the liability occurs.

Neither party shall be liable for any indirect, incidental, punitive or consequential loss, damage, cost or expense of any kind whatsoever and howsoever caused, even if foreseeable, or if that party has been advised of the possibility of those losses including: loss of profits; loss of revenue; loss of business; and business interruption.

**Use of the Service**

You agree to use the Service in accordance with these Terms of Use and in accordance with all applicable laws, statutes and regulations.

In particular, you agree that you will not use the Service to:

i. transmit, distribute or store material that is, in our reasonable opinion, inappropriate or which is illegal, defamatory, libellous, indecent, or obscene;

ii. transmit, distribute or store material that contains a virus, or other component which is, or is likely to be, harmful to the Service;

iii. transmit or distribute any material containing fraudulent offers for goods or services, or any advertising or promotional materials that contain false, deceptive, or misleading statements, claims, or representations; or

iv. send unsolicited e-mail messages, SMS or postings, including, without limitation, bulk commercial advertising or informational announcements ("Spam").

**Responsibility for Content**

You are solely responsible for: (i) any user content that you publish or make available through the Service; and (ii) ensuring that you comply with all laws, statues and regulations (from time to time in force) which are applicable to the publication and distribution of such user content.

We take no responsibility for any user content created, accessible or delivered on or through the Service. We do not monitor or exercise any editorial control over such user content.

**Intellectual Property**

For the purposes of these Terms of Use, "Intellectual Property Rights" means patents, copyright, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications, renewals or extensions of such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

All Intellectual Property Rights in or arising out of or in connection with the Service (excluding any user content) are owned by, or licensed to, us. Nothing in these Terms of Use purports to grant you any rights in the Service.

You agree that you will not use the Service in any manner that does, or is likely to, infringe, dilute, misappropriate, or otherwise violate any Intellectual Property Rights in the Service.

Where you upload content to the Service, you agree that have all necessary licences, rights, consents and permissions required to upload that content. You shall retain ownership of any Intellectual Property Rights in the user content that you upload or publish on the Service and you hereby grant us a non-exclusive, worldwide and royalty-free licence to use, reproduce and display such user content for the purpose of providing the Service to you.

Unless otherwise directed by you in writing, you agree to allow us to use your company logo for marketing purposes, and to use your company name in a brief project summary on our website.

**Entire Agreement**

These Terms of Use constitute the entire agreement between you and us in relation to its subject matter. You acknowledge that you have not relied on any statement, promise or representation or assurance or warranty that is not set out in these Terms of Use.

**Changes to these Terms of Use**

We reserve the right, at our sole discretion, to modify or replace these Terms of Use at any time by posting the updated terms on our website. Where any changes to these Terms of Use are, in our reasonable opinion, likely to have a significant impact on you, you agree that we may contact you to let you know about these changes. Your continued use of the Service after that time constitutes your acceptance of the new Terms of Use.

**Severance**

If any provision of these Terms of Use is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of these Terms of Use.

**Governing Law**

This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed and construed in accordance with the laws of England.

**Contacting Us**

To contact us about the Service and/or these Terms of Use please use the contact details provided below:

Telephone: +44 (0)1737 846100

Email: support@metasphere.co.uk

Address: Millfield, Dorking Road, Tadworth, Surrey, KT207TD

Any notice given by you under or in connection with these Terms of Use must be in writing and must be delivered personally, sent by pre-paid first class post or other next working day delivery service, or by email using the contact details above.

Any such notice is deemed to have been received by us:

(a) if delivered personally, on signature of a delivery receipt or at the time the notice is left at the proper address;

(b) if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second working day after posting; or

(c) if sent by email, at the time of transmission subject to there being no subsequent automatic notification that the email failed to be delivered.