

MUNCH SOFTWARE AS A SERVICE: END USER LICENSE AGREEMENT

Last updated 10 November 2023

All clauses in this EULA displayed in **BOLD** are provisions which limit the risk or liability of Munch and constitute an assumption of risk or liability by you, impose an obligation on you to indemnify Munch or is an acknowledgement of a fact by you. Please read these clauses carefully before agreeing to this EULA.

1. DISCLAIMER

- 1.1. **Munch does not endorse the accuracy or reliability of any information, statement, opinion, advice or other content contained in or provided through the Munch Software, and such content does not constitute legal, financial or other professional advice.**
- 1.2. **If you rely on any information in the Munch Software, you do so strictly at your own risk and Munch will not be responsible for any loss whatsoever which you may suffer as a result.**
- 1.3. **All information provided in the Munch Software is the intellectual property of Munch or has been licensed to Munch to use and are subject to this EULA and applicable laws.**

2. INTERPRETATION AND DEFINITIONS

- 2.1. **"Customer Account"** means the account created by the Customer through which the Munch Software is accessed, managed and used by the Customer;
- 2.2. **"Customer"** means the organisation that subscribes to the Munch Software and receives a License to the Munch Software and controls the subscription for the Munch Software, and includes the End User acting as the authorised representative of the Customer as the case may be;
- 2.3. **"Munch", "us" and "we"** means Munch South Africa Proprietary Limited, a company incorporated under the laws of South Africa (registration number 2023/733533/07), with its registered address at Park Lane West Building, 194 Bancor Avenue, Menlyn Maine Waterkloof Glen, Pretoria, Gauteng, 0181;
- 2.4. **"End User" or "User" or "you"** means an individual who has been authorised to use the Munch Software by the Customer under the Customer's License;
- 2.5. **"EULA"** means this end user licence agreement that forms the legally binding agreement that regulates your use of the Munch Software and our relationship with you as an End User;

- 2.6. **"License"** means the license that is subscribed for by the Customer in terms of a customer agreement, and each sub-license granted to an individual End User, as further described in clause 6 below, allowing the End User to access the Munch Software;
- 2.7. **"Personal Information"** means all information about an End User or the Customer that can be used to identify the End User or Customer;
- 2.8. **"Munch Software"** means the services and software supplied by Munch to the Customer, including but not being limited to Munch Go, Munch PoS, Munch Cook, Munch Portal, Munch Kiosk, Munch Order Display, Munch Pay, Munch Online Ordering and Munch Contact Centre;
- 2.9. **"User Account"** means the personal account used by each End User to access the Munch Software as further described below.

3. INTRODUCTION

- 3.1. This EULA will apply to the Customer and each End User as soon as a Customer Account or User Account (collectively, **"Account"**) is created, and this EULA is accepted by each End User.
- 3.2. To create an Account and make use of the Munch Software, each End User must agree to this EULA. We reserve the right to refuse any request for a sub-license to an End User or the use of the Munch Software by an End User at our discretion.
- 3.3. This EULA may also apply to any future services, features and interaction channels that we may make available through the Munch Software unless stated otherwise.
- 3.4. Your use of the Munch Software will be regulated by this EULA as well as any other terms that are available through the Munch Software (**"the Additional Terms"**). The Additional Terms include our privacy policy governing the use of your Personal Information (**"the Privacy Policy"**).

4. CHANGES

- 4.1. We may change or add to this EULA or the Additional Terms, change or cancel the Munch Software or offer new services from time to time, and change or remove the Munch Software from time to time, at our discretion. We will notify you of any material changes *via* email which will contain a link to the updated terms or with a prominent notice on the Munch Software. For continued use of the Munch Software, you may be requested, from time to time, to accept new or amended versions of this EULA.
- 4.2. Should you disagree with the changes made, you can discontinue using the Munch Software.

5. DURATION OF THIS EULA

This EULA applies for as long as you use the Munch Software, and will also apply the period until any disputes have been settled in the event of any disputes arising from the use of the Munch Software.

6. LICENSE SUBSCRIPTIONS

6.1. In order to access the Munch Software, the Customer will subscribe for a License to the Munch Software and will authorise its employees and assigns to use the Munch Software as an End User. The Customer will enter into a separate agreement with Munch or its authorised reseller, which agreement will regulate the terms applicable to License subscriptions, service levels and payment arrangements, amongst others.

6.2. The Customer and its End Users will retain access to the Munch Software until the end of the Customer's subscription period, unless the Customer's subscription or a specific User's Account is cancelled with immediate effect.

7. ACCOUNTS AND INFORMATION

7.1. **Customer Account.** In order to access the Munch Software and subscribe for Licenses, the Customer must create an initial Customer Account on the Munch Software. Through the Customer Account, the Customer will be able to allow access by its employees and users to the Munch Software as End Users, assign End Users with functionality roles, and manage the Customer's subscription to the Munch Software generally.

7.2. **User Accounts.** All End Users will be required to create a User Account in order to access the Munch Software as an End User. The End User will be required to provide certain Personal Information in order to create the User Account. The User Account is a sub-account of the Customer Account and is subject to the Customer Account being active and the Customer having an active License. Once the User Account has been created, the End User will be able to use the Munch Software in accordance with the type of functionality assigned to the End User by the Customer.

7.3. By creating an Account, the End User acknowledges and agrees that it is authorised to provide all information provided to Munch, including any Personal Information.

7.4. Users are solely responsible for the safekeeping of their Account access credentials ("**Access Details**"). The Access Details may only be used by the User to whom the Access Details belong, and shall not be shared with, or used by any other person, including other Users. You must inform us immediately if there has

been, or if you suspect, any breach of security, confidentiality or of an Account, and update the relevant Access Details as soon as possible.

7.5. **The Customer remains responsible for all use of the Munch Software by Users.**

7.6. It is in your interests to familiarise yourself with our security requirements, guidelines and procedures communicated by us from time to time and follow these carefully.

8. LICENSE, OWNERSHIP AND CONDITIONS OF USE

8.1. Munch grants the End User a non-exclusive, non-transferable, limited license to access and use the Munch Software for the duration of this EULA and the Customer's License.

8.2. End Users are strictly prohibited from sub-licensing their Account to any other person.

8.3. The User unconditionally and irrevocably agrees that:

8.3.1. all right, title and interest in and to the Munch Software vests in Munch and is proprietary to Munch or its licensors;

8.3.2. the User will not at any time, under any circumstances, acquire any right, title, or interest in or to the Munch Software, nor will it at any time infer to any User or any related party any proprietary rights whatsoever in respect of the Munch Software;

8.3.3. the User will at all times strictly comply with the acceptable use policy as set out in clause 13; and

8.3.4. the Customer will take all reasonable precautions to safeguard the Munch Software from unauthorised disclosure, reproduction or use at any time by any person other than the End Users.

8.4. Any modifications (including improvements) to the Munch Software, even when on behalf of the Customer, shall be the intellectual property of Munch.

9. USER CONTENT

9.1. By posting any content and information to the Munch Software or in connection with your use of the Munch Software ("**User Content**"), the End User represents and warrants to Munch that (1) the End User owns or has the rights to use the User Content, (2) the posting of the User Content does not violate any rights of any person or entity, and (3) the End User has no agreement with or obligations to any third party that would prohibit his use of the Munch Software in the manner so used.

The End User agrees to pay all royalties, fees, and any other monies owing to any person or entity by reason of any User Content posted by you to or through the Munch Software.

- 9.2. By posting User Content, the End User gives Munch and our affiliates the right to use and display such User Content in such manner as is necessary to provide the Munch Software to you, provided that this right shall not give Munch any ownership or other rights in the User Content.

10. USER CONDUCT

The End User agrees not to use the Munch Software to take any action that (including with respect to any User Content): (1) are patently offensive in any manner (as determined in Munch' sole discretion), (2) involve commercial activities without Munch' prior written consent, such as contests or sweepstakes, (3) are contrary to Munch' public image, goodwill, or reputation, (4) infringe on Munch' or any third party's intellectual property rights, (5) violate any law or any third party's legal rights, or (6) "frame" or "mirror" any part of the website without Munch's prior written consent.

11. CANCELLATION AND SUSPENSION

- 11.1. At any time, and without cause, we may cancel or suspend an Account or access to the Munch Software or cancel this EULA in our sole discretion, without any liability in accordance with clause 21.6 if a User is in breach of this EULA.
- 11.2. In addition, we may cancel an Account or License, terminate this EULA, or suspend our obligations if:
- 11.2.1. we become aware of circumstances that lead us to believe that you will not perform your obligations required by this EULA;
 - 11.2.2. you have used the Munch Software to breach the intellectual property rights of any third party;
 - 11.2.3. we reasonably believe that the Munch Software is being used by any User in violation of applicable law; or
 - 11.2.4. any payments due by the Customer to us have been suspended.
- 11.3. Importantly, all our rights in respect of the confidentiality undertakings and our limitation of liability as set out below will survive the termination of this EULA.
- 11.4. Upon termination of this EULA:
- 11.4.1. all Users must make all reasonable efforts to delete all parts of the Munch Software held by the Users in any format whatsoever;
 - 11.4.2. all Users must immediately cease all use of the Munch Software;

- 11.4.3. we will archive the Customer Account and all User Accounts so that the Accounts are accessible in the event that the Customer reactivates the Customer Account. Any part of the Munch Software that requires an Account for access will no longer be accessible to the Customer or its Users; and
- 11.4.4. we will archive the Customer's payment information and may retain the information, including Personal Information, generated as a result of your use of the Munch Software for a reasonable period in line with our Privacy Policy.

12. CHANGES TO THE MUNCH SOFTWARE

Munch will inform Users of any material changes to the Munch Software by manner of email or prominent notice on the Munch Software. Continued use of the Munch Software after this notice has been displayed shall be deemed as your acceptance of the changes.

13. ACCEPTABLE USE POLICY

- 13.1. The User unconditionally and irrevocably agrees that:
 - 13.1.1. all right, title and interest in and to the Munch Software vests in Munch and is proprietary to Munch;
 - 13.1.2. the User will not at any time, under any circumstances, acquire any right, title, or interest in or to the Munch Software;
 - 13.1.3. the User will not:
 - 13.1.3.1. modify, create derivative works from, distribute or sub-license the Munch Software;
 - 13.1.3.2. use the Munch Software in any way that allows third parties to use or benefit from the Munch Software; or
 - 13.1.3.3. reverse engineer, decompile, disassemble, or otherwise attempt to derive any of the source code or other component parts of the Munch Software; and
 - 13.1.4. the User will take all reasonable precautions to safeguard the Munch Software from unauthorised disclosure, reproduction or use at any time by any person other than the Parties.
- 13.2. Some devices may not support the use of the Munch Software. It is your responsibility to keep your device(s) updated and/or in a condition for them to support the use of the Munch Software, including internet access capabilities.

- 13.3. The use of the Munch Software may be restricted to certain geographical areas. It is your responsibility to determine whether your location is supported by the Munch Software before incurring any liability to us as we will not be liable for any loss that you may incur because of the Munch Software not being supported in your location.
- 13.4. The User agrees that Munch may collect and use any technical data and related information from the User's use of the Munch Software, including but not limited to technical information about the device used to access the Munch Software, system and application software, information that is collected for the provision of software updates, product support, and other services related to the Munch Software. Munch may use this information in strict accordance with the Privacy Policy.

14. THIRD PARTY APPLICATIONS AND SITES

- 14.1. Munch Software is integrated with third party applications, websites, and services ("**Third Party Software**"). The Third Party Software providers may have their own terms of use and privacy policies which will apply to your use of the Third Party Software. You agree to use the Third Party Software in accordance with their terms of use and that we are not responsible or liable for the Third Party Software.
- 14.2. We may provide certain hyperlinks to third party websites or apps only for your convenience, and the inclusion of any hyperlinks or any advertisement of any third party on the Munch Software does not imply endorsement by us of their websites or apps, their products, business or security practices or any association with its operators.
- 14.3. If you access and use any third-party websites, apps, products, services, and/or business, you do that solely at your own risk.

15. INTELLECTUAL PROPERTY RIGHTS

- 15.1. You acknowledge and agree that all right, title and interest in, and to, any of our intellectual property (including but not limited to any copyright, trademark, design, logo, process, practice, or methodology which forms part of, or is displayed or used on the Munch Software including, without limitation, any graphics, logos, designs text, button icons, images, audio clips, digital downloads, data compilations, page headers and software) is proprietary to Munch or the respective owner(s)' property and will remain our or the owner's property at all times.
- 15.2. You agree that you will not acquire any rights of any nature in respect of that intellectual property by using the Munch Software. Any right not expressly granted by Munch to the User is reserved for Munch.

16. WARRANTIES AND REPRESENTATIONS

Subject to applicable laws:

- 16.1. Munch warrants that it owns the Munch Software or is authorised to licence it to the Customer and Users and that the Munch Software will not infringe any proprietary rights of any third party;**
- 16.2. other than as set out in the Customer agreement with Munch or its reseller, Munch gives no guarantee of any kind concerning the content or quality of the Munch Software;**
- 16.3. Munch does not give any warranty (express or implied) or make any representation that the Munch Software will operate error free or without interruption or that any errors will be corrected or that the content is complete, accurate, up to date, or fit for a particular purpose; and**
- 16.4. Munch makes no representations to you, either express or implied, and we will have no liability or responsibility for the proper performance of the Munch Software and/or the information, images or audio contained in the Munch Software. the Munch Software is used at your own risk.**
- 16.5. You warrant to and in favour of Munch that:**
 - 16.5.1. you have the legal capacity to agree to and be bound by this EULA; and**
 - 16.5.2. this EULA constitutes a contract valid and binding on you and enforceable against you.**
- 16.6. Each of the warranties given by you will:**
 - 16.6.1. be a separate warranty and will in no way be limited or restricted by inference from the terms of any other warranty or by any other words in these Terms;**
 - 16.6.2. continue and remain in force irrespective of whether this EULA is active, suspended or cancelled; and**
 - 16.6.3. be deemed to be material.**

17. LIMITED LIABILITIES

Munch will not, under any circumstances, be liable to the licensee for any costs, claims, damages (including, without limitation, indirect, extrinsic, special, penal, punitive, exemplary or consequential loss or damage of any kind), penalties, actions, judgements, suits, expenses, disbursements, fines or other amounts which the End User may sustain or suffer (or with which the licensee may be threatened) as the result of, whether directly or indirectly,

any act or omission in the course of or in connection with the implementation of this EULA or use of the Munch Software or the termination of this EULA.

18. INDEMNITY

You hereby indemnify, defend and hold Munch (including our shareholders, directors and employees, in whose favour this constitutes a stipulation capable of acceptance in writing at any time), our affiliates and their employees and suppliers harmless from any and all third party claims, any, actions, suits, proceedings, penalties, judgments, disbursements, fines, costs, expenses, damages (including, without limitation, indirect, extrinsic, special, penal, punitive, exemplary or consequential loss or damage of any kind) and liabilities, including reasonable attorneys' fees, whether directly or indirectly arising out of, relating to, or resulting from negligence, intent, breach of this EULA or violation of applicable law, rule, regulation by a party or its affiliates, or their respective owners, officers, directors, employees, or representatives or any other action or omission of any nature.

19. FORCE MAJEURE

Except for the obligation to pay monies due and owing, neither party will be liable if either party cannot perform in terms of any agreed terms due to reasons beyond our control. This includes lightning, flooding, exceptionally severe weather, fire, explosion, war, civil disorder, industrial disputes, acts or omissions of persons for which we are not responsible, and acts of government or other competent authorities (including telecommunications and internet service providers).

20. ARBITRATION

20.1. Any dispute which arises out of or pursuant to this EULA (other than where an interdict is sought, or urgent relief may be obtained from a court of competent jurisdiction) will be submitted to and decided by arbitration in accordance with the arbitration rules and legislation for the time being in force in the Republic of South Africa.

20.2. The parties will jointly appoint an arbitrator within 14 (fourteen) calendar days of either party demanding arbitration from the other party, failing which either party will be entitled to approach the Secretariat of the Arbitration Foundation of South Africa ("**AFSA**") to recommend an arbitrator to preside over the arbitration proceedings, which recommendation will immediately be deemed to have been accepted by the parties as soon as such recommendation is made to either party and the arbitration process may immediately commence.

20.3. Unless otherwise agreed, the rules of Commercial Arbitration as stipulated by AFSA will apply to such arbitration.

- 20.4. That arbitration shall be held with only the parties and their representatives present at Johannesburg.
- 20.5. The provisions of this clause 20 are severable from the rest of this EULA and shall remain in effect even if this EULA is terminated for any reason.
- 20.6. The arbitrator's award shall be final and binding on the parties and incapable of appeal.

21. GENERAL

- 21.1. **Suspension of the Munch Software:** we may temporarily suspend the Munch Software for any reason, including repairs or upgrades to the Munch Software or other systems. Munch will take reasonable efforts to notify Users of such suspensions in advance.
- 21.2. **Entire agreement:** this EULA constitutes the whole agreement between the parties relating to the subject matter of this EULA and supersedes any other discussions, agreements and/or understandings regarding the subject matter of this EULA.
- 21.3. **Confidentiality:** neither party will disclose any confidential information to any third party without the prior written approval of the other party, unless required by law.
- 21.4. **Law and jurisdiction:** this EULA and all obligations connected to it or arising from it will be governed and interpreted in terms of the laws of the Republic of South Africa. Each party submits to the jurisdiction of the South African courts.
- 21.5. **Good faith:** the parties will in their dealings with each other display good faith.
- 21.6. **Breach:** unless otherwise set out herein, if either party to this EULA breaches any material provision or term of this EULA and fails to remedy such breach within 7 (seven) calendar days of receipt of written notice requiring it to do so then the aggrieved party shall be entitled without notice, in addition to any other remedy available to it at law or under this EULA (including obtaining an interdict), to cancel this EULA or to claim specific performance of any obligation whether or not the due date for performance has arrived, in either event without prejudice to the aggrieved party's right to claim damages.
- 21.7. **No waiver:** the failure of Munch to insist upon or enforce strict performance by the User of any provision of this EULA, or to exercise any right under this EULA, will not be construed as a waiver or relinquishment of Munch' right to enforce any such provision or right in any other instance.
- 21.8. **No assignment:** the User will not be entitled to cede its rights or delegate its obligations in terms of this EULA without the express prior written consent of Munch.

- 21.9. **Relationship between the parties:** the parties agree that neither party is a partner or agent of the other party and neither party will have any right, power, or authority to enter into any agreement for, or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other party.
- 21.10. **No representation:** to the extent permissible by law, no party will be bound by any express or implied or tacit term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.
- 21.11. **Severability:** any provision in this EULA which is or may become illegal, invalid or unenforceable shall be ineffective to the extent of such prohibition or unenforceability and will be severed from the balance of this EULA, without invalidating the remaining provisions of this EULA.
- 21.12. **No stipulation:** no part of this EULA shall constitute a stipulation in favour of any person who is not a party to this EULA unless the provision in question expressly provides that it does constitute such a stipulation.
- 21.13. **Notices:**
- 21.13.1. Munch selects 194 Bancor Avenue, Menlyn Maine Waterkloof Glen, Pretoria, Gauteng, 0181 as its physical address and legal@munch.cloud as its email address for the service of all formal notices and legal processes in connection with this EULA, which may be updated from time to time by updating this EULA.
- 21.13.2. You hereby select the email address specified in the Customer's Account as your address for service of all formal notices and legal processes in connection with this EULA.
- 21.13.3. Service *via* email will be accepted in all cases where notice is required unless alternative service is required by law. Service *via* email is deemed to be received at the time and day of sending.