

Housing Partners Ltd

Terms and Conditions

HOUSING PARTNERS LIMITED
STANDARD TERMS AND CONDITIONS OF SUPPLY OF SAAS SERVICES (the "Terms")

These Terms shall apply to HPL's provision of the Services. These Terms incorporate the HPL Policies (all capitalised terms as defined below).

1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in these Terms.

"Annual Charge": the annual subscription fees set out in the Order that are payable by the Customer to HPL in respect of each of the Services.

"Authorised Users": those employees, agents, officers, directors and independent contractors of the Customer who are authorised or permitted by the Customer to receive or use the Services.

"Business Day": any day which is not a Saturday, Sunday or public holiday in England.

"Commercially Sensitive Information": the prices in the Order and any other information of a commercially sensitive nature relating to HPL, its intellectual property rights or its business or which HPL has indicated to the Customer that, if disclosed by the Customer, would cause HPL significant commercial disadvantage or material financial loss.

"Confidential Information": information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 11.5, including the Commercially Sensitive Information.

"Contract": the contract between HPL and the Customer for the supply of the Services, including all Schedules, Annexes, HPL Policies and other documents that are incorporated into the Order.

"Customer": the business customer, landlord, housing association and/or local authority purchasing the Services as set out in the Order.

"Customer Data": the data inputted by the Customer, Authorised Users, or HPL on the Customer's behalf for the purpose of using the Services (not including any Tenant Data).

"Data Protection Legislation": (i) unless and until no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) ("GDPR") and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK; and then (ii) any successor legislation to the GDPR or the Data Protection Act 2018.

"Effective Date": has the meaning set out in clause 2.1.

"Environmental Information Regulations": the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the

Information Commissioner or relevant government department in relation to such regulations.

"FOIA": the Freedom of Information Act 2000, and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

"HPL": Housing Partners Limited registered in England and Wales with company number 04667857 whose registered office is at Whittington Hall, Whittington Road, Worcester, Worcestershire, WR5 2ZX.

"HPL Data": any data provided or made accessible to the Customer pursuant to the Services, including anonymised statistical property search data but excluding the Tenant Data.

"HPL Policies": means the HPL policies available at www.housingpartners.co.uk that apply to the provision and/or receipt of the Services and as may be updated, amended or replaced by HPL from time to time.

"Implementation Plan": means a plan, if any, agreed by HPL and the Customer in writing setting out the tasks that HPL and the Customer are required to complete for the purposes of implementing the Services.

"Implementation Services": means the implementation services, if any, set out in an Implementation Plan.

"Information": has the meaning given under section 84 of FOIA.

"Initial Subscription Term": shall be from the Service Effective Date until the date preceding the anniversary of the Service Effective Date, or as otherwise agreed between the parties in writing from time to time.

"Normal Business Hours": 9.00 am to 5.00 pm local UK time, each Business Day.

"Order": the order issued by HPL in connection with the supply of the Services to the Customer, which incorporates and is subject to these Terms and sets out the Services to which the Customer wishes to Subscribe.

"Renewal Period": the period described in clause 14.1.

"Request for Information": a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.

"Service Effective Date": has the meaning set out in clause 2.2.

"Service Level Agreement": means the HPL service level agreement available at <http://www.housingpartners.co.uk/terms-of-use>.

"Services": the subscription services provided by HPL, as described in the Specification.

"Specification": means the specification for the Services as set out in the Contract.

"Subscription": the Customer's subscription to any or several of the Services as described in the Order and which entitles the Customer to access and use the Services in accordance with these Terms, and "Subscribe" and "Subscribed" shall be construed accordingly.

"Subscription Term": has the meaning given in clause 14.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

"Tenant Data": the data, if any, inputted by or on behalf (other than by the Customer) of the Tenant for the purpose of using the Service.

"Tenants": the persons:

- (a) to whom the Customer has or is providing living accommodation;
- (b) to whom the Customer is assessing their application for living accommodation; or
- (c) persons who are using HPL's products, services and/or sites in order to search or apply for living accommodation.

"Third Party Data": means any data provided to, or used by, HPL in performing the Service other than Tenant Data and Customer Data (including any third party data identified or referred to in the Specification).

"Virus": any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by rearranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

"Website": www.housingpartners.co.uk.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of these Terms.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Words in the singular shall include the plural and vice versa.
- 1.6 A reference to one gender shall include a reference to the other genders.

1.7 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.8 A reference to writing or written includes faxes but not e-mail.

1.9 References to clauses and schedules are to the clauses and schedules of these Terms; references to paragraphs are to paragraphs of the relevant schedule to these Terms.

2. Basis of Contract

2.1 The Order constitutes acceptance by the Customer to Subscribe to the Services in accordance with these Terms and shall be accepted (and the Contract formed) on receipt by HPL of the Customer's signed Order (the "Effective Date").

2.2 The Services shall commence on the earlier of HPL first providing the Service to the Customer following the receipt from the Customer of the relevant Customer Data or 30 days from the Effective Date ("Service Effective Date").

2.3 If set out in the Order that HPL is to provide Implementation Services, HPL shall perform the Implementation Services from the date set out in the Implementation Plan and HPL and the Customer shall each comply with their respective obligations as set out in the implementation Plan.

2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of HPL which is not set out in the Contract.

2.5 Any samples, drawings, descriptive matter or advertising issued by HPL, and any descriptions or illustrations contained in HPL's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the services contemplated under the Contract. They shall not form part of the Contract or have any contractual force.

2.6 These Terms apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.7 Any quotation given by HPL shall not constitute an offer.

3. Subscription

3.1 Subject to the restrictions set out in this clause 3 and the other terms and conditions of these Terms, HPL hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Services during the Subscription Term solely for the Customer's internal business operations.

3.2 In relation to the Authorised Users, the Customer undertakes that:

- (a) the maximum number of Authorised Users that it authorises to access and use the Services shall not exceed the number outlined in the Order (if any such maximum number is set out in the Order);
 - (b) each Authorised User shall keep a secure password for his use of the Services and that each Authorised User shall keep his password confidential;
- 3.3 The Customer acknowledges and agrees that any content uploaded to any public or tenant facing website which forms part of the Services will be considered nonconfidential and non-proprietary, and HPL have the right to use, copy, distribute and disclose to third parties any such content for any purpose.
- 3.4 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:
 - (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - (b) facilitates illegal activity;
 - (c) depicts sexually explicit images;
 - (d) promotes unlawful violence;
 - (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - (f) in a manner that is otherwise illegal or causes damage or injury to any person or property;

and HPL reserves the right, without liability or prejudice to its other rights to the Customer, to edit or delete the material or to disable the Customer's access to any material that breaches the provisions of this clause.

- 3.5 The Customer shall not:
 - (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
 - (i) and except to the extent expressly permitted under these Terms, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services (as applicable) in any form or media or by any means; or
 - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the software forming part of the Services; or
 - (b) access all or any part of any Services in order to build a product or service which competes with the Services; or

- (c) use the Services to provide services to third parties other than to the Tenants (if applicable) or otherwise expressly permitted by the Order; or
 - (d) subject to clause 17.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Authorised Users, or
 - (e) attempt to obtain, or assist third parties in obtaining, access to the Services, other than as required or permitted by law or as expressly permitted by the Contract; and
- 3.6 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, promptly notify HPL.
- 3.7 The rights provided under this clause 3 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

4. Services

- 4.1 HPL shall, during the Subscription Term, provide the Services to the Customer on and subject to the Contract.
- 4.2 HPL shall use reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for any maintenance to be carried out, notice of which shall be provided to the Customer at least 6 Normal Business Hours' in advance.
- 4.3 HPL will, as part of the Services and at no additional cost to the Customer (except where the Customer uses the Services contrary to HPL's written instructions, or where the Services are modified or altered by a third party not previously approved in writing by HPL), provide the Customer with reasonable telephone support in connection with the use of the Services in accordance with the Service Level Agreement.

5. Data

- 5.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 5 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. In this clause 5, the terms **Data Controller, Data Processor, Data Subject, Personal Data, Personal Data Breach** and **processing** (and **process** or **processed**) shall have the meanings given to them in the Data Protection Legislation.
- 5.2 As between HPL and the Customer, the Customer shall be deemed to own all right, title and interest in and to all of the Customer Data and HPL shall be deemed to own all right, title and interest in and to all of the HPL Data. The Customer shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 5.3 HPL shall follow its archiving procedures for Customer Data as set out in its Privacy and Security Policy from time to time (a copy of which is available at

www.housingpartners.co.uk). In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for HPL to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by HPL in accordance with the archiving procedure described in its Privacy and Security Policy. HPL shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties subcontracted by HPL to perform services related to Customer Data maintenance and back-up).

- 5.4 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and HPL is the data processor of any Personal Data that HPL processes on the Customer's behalf when performing its obligations under this Contract. The Data Processing Annex sets out the subject-matter, nature and purpose of processing by HPL, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 5.5 If HPL processes any Personal Data on the Customer's behalf when performing its obligations under this Contract, the Customer shall ensure:
- (a) that the Customer is entitled to transfer the relevant Personal Data to HPL so that HPL may lawfully use, process and transfer the Personal Data in accordance with this Contract on the Customer's behalf; and
 - (b) that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable Data Protection Legislation.
- 5.6 Without prejudice to clause 5.5, HPL shall, in relation to any Personal Data processed on the Customer's behalf when HPL is performing its obligations under this Contract:
- (a) process that Personal Data only on the written instructions of the Customer unless HPL is required by the laws of any member of the European Union or by the laws of the European Union applicable to HPL to otherwise process the Personal Data. Where HPL is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, HPL shall promptly notify the Customer of this before performing the processing required by the applicable laws unless those applicable laws prohibit HPL from so notifying the Customer;
 - (b) ensure that it complies with the Privacy and Security Policy from time to time (a copy of which is available at <http://www.housingpartners.co.uk/terms-of-use>), which has been reviewed and approved by the Customer, in order to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;

- (c) ensure that all of its personnel that have access to and/or process the Personal Data are obliged to keep the Personal Data confidential;
- (d) not transfer any Personal Data outside of the European Economic Area unless transfer safeguards are in place for such a transfer, to the extent required by the Data Protection Legislation (and 'transfer safeguards' means safeguards that are recognised under the Data Protection Legislation for permitting the transfer of Personal Data outside of the European Economic Area and/or the United Kingdom (as applicable));
- (e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Customer without undue delay on becoming aware of a Personal Data breach;
- (g) maintain complete and accurate records and information to demonstrate its compliance with this clause 5; and
- (h) at your cost and upon receipt of your prior written notice, allow you, on a periodic basis and/or in the event that we notify you of personal data breach in respect of personal data, reasonable access to the relevant records, files, computer or other communication systems, for the purposes of reviewing our compliance with the data protection laws when acting upon your behalf as the data processor

5.7 The Customer consents to HPL appointing the sub-processors set out in the Data Processing Annex as third-party processors of Personal Data under this Contract. HPL confirms that it has entered or (as the case may be) will enter with the sub-processor into a written agreement. As between the Customer and HPL, HPL shall remain fully liable for all acts or omissions of any sub-processor appointed by it pursuant to this clause 5.7. HPL shall notify the Customer, via email of any changes to the list of sub-processors who may process Personal Data before authorising any new or replacement sub-processor to process Personal Data in connection with the provision of the Services.

5.8 The Controller may object to the use of a new or replacement sub-processor, by notifying the HPL promptly in writing within ten (10) Business Days after receipt of HPL's notice. If the Customer objects to a new or replacement sub-processor, and that objection is not unreasonable, the Customer may terminate the Agreement or applicable Statement of Work with respect to those Services which cannot be provided by HPL without the use of the new or replacement sub-processor.

5.9 The Customer warrants and represents that, prior to the Customer providing HPL with any Tenant Data, Tenants have, where required by law, given their appropriate consent to the Customer to permit HPL's use of the Tenant Data in order for HPL to provide the Services and the Customer shall indemnify, defend and hold harmless HPL

against any claims, losses, damages, costs (including all legal fees) and expenses incurred by or awarded against HPL arising out of or in connection with the Customer's failure to obtain such consents.

- 5.10 The Customer shall indemnify and keep indemnified HPL in respect of all losses, liabilities, damages, costs and expenses suffered or incurred by, awarded against or agreed to be paid by, HPL and/or any sub-processor arising from or in connection with any processing carried out by HPL in accordance with the Data Processing Annex, any breach by the Customer of the Data Protection Legislation and/or any breach of clause 5.5. The parties agree that the Customer shall not be entitled to claim back from HPL any losses, liabilities, damages, costs and expenses to the extent that the Customer is liable to indemnify HPL against the same in accordance with clause 5.8 and/or this clause 5.9.
- 5.11 HPL may, at any time on not less than 30 days' notice, revise this clause 5 by replacing it (or elements of it) with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Contract).

6. Third party providers

- 6.1 The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. HPL makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not HPL. HPL recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. HPL does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

7. HPL's obligations

- 7.1 HPL undertakes that all Services will be performed with reasonable skill and care.
- 7.2 The undertaking at clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to HPL's instructions, or modification or alteration of the Services by any party other than HPL or HPL's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking in clause 7.1, HPL will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Should HPL provide a correction or substitution in accordance with this clause 7.2, this correction or substitution shall constitute the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 7.1.

- 7.3 HPL:
- (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services and/or the information obtained by the Customer through the Services will be up to date and/or meet the Customer's requirements;
 - (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities;
 - (c) does not warrant that the Customer's use of the Services will result in any Tenants subscribing to and/or using the Services, or that its use will result in any number of successful exchanges of properties between Tenants.
- 7.4 HPL will provide the Customer with advertising and promotional materials in order to promote the Services to Tenants as agreed by the parties from time to time.
- 7.5 The Contract shall not prevent HPL from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the Contract.
- 7.6 HPL warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under these Terms and the Contract.

8. Customer's obligations

- 8.1 The Customer shall:
- (a) provide HPL with:
 - (i) all necessary co-operation in relation to these Terms;
 - (ii) all Customer Data that the Customer requires to be utilised by the Services; and
 - (iii) all necessary access to such information as may be required by HPL, in order to provide the Services, including but not limited to Customer Data and security access information;
 - (b) comply with all applicable laws and regulations with respect to its activities under these Terms;
 - (c) reasonably assist, in the case of tenant facing services, with the marketing and promotion of the Services to Tenants, acknowledging that in order to maximise use by Tenants of such services is dependent on the joint marketing and promotional efforts of both parties;

- (d) carry out all other Customer responsibilities set out in the Contract in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, HPL may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (e) ensure that the Authorised Users use the Services in accordance with these Terms and shall be responsible for any Authorised User's breach of the Contract;
- (f) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Customer to use and enjoy the benefit of the Services;
- (g) ensure that its network and systems comply with the relevant specifications set out in the Contract and any updates to the same that may be provided by HPL in writing from time to time; and
- (h) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to HPL's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

9. Charges and payment

- 9.1 The Customer shall pay the Annual Charge and any other fees (including any Implementation Service charges) set out in the Order to HPL in accordance with this clause 9.
- 9.2 The Customer shall prior to or on the Service Effective Date provide to approved purchase order information acceptable to HPL and any other relevant valid, up-to-date and complete contact and billing details and HPL shall invoice the Customer:
- (a) on the Service Effective Date for the Annual Charge payable in respect of the Initial Subscription Term; and
 - (b) subject to clause 14.1, at least 30 days prior to each anniversary of the Service Effective Date for the Annual Charge payable in respect of the next Renewal Period,
- and the Customer shall pay each invoice within 30 days after the date of such invoice.
- 9.3 If HPL has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of HPL:
- (a) HPL may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and HPL shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
 - (b) interest shall accrue on such due amounts at an annual rate equal to 3% over the then current base lending rate of National Westminster Bank at the date

the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment,

and any such breach shall be a material breach pursuant to clause 14.3(a).

9.4 All amounts and fees stated or referred to in these Terms:

- (a) shall be payable in pounds sterling;
- (b) are, subject to clause 13.4(b), non-cancellable and non-refundable;
- (c) are exclusive of value added tax, which shall be added to HPL's invoice(s) at the appropriate rate.

9.5 HPL shall be entitled to increase the Annual Charge and any other fees charges pursuant to receiving the Services at the start of each Renewal Period by giving written notice to the Customer at least 45 days prior to the commencement of the start of the Renewal Period. In the event the Customer does not agree to any notified increase in the Annual Charge, the Customer may give written notice to terminate the Contract by providing at least 30 days' notice prior to the start of the relevant Renewal Period. Should the Customer not terminate the Contract in accordance with this clause 9.5, the Contract shall continue for the Renewal Period with the Annual Charge being increased in line with the notice originally given by HPL in accordance with this clause 9.5.

10. Proprietary rights

10.1 The Customer acknowledges and agrees that HPL and/or its licensors own all intellectual property rights in, and otherwise used by HPL as part of, the Services. Except as expressly stated herein, the Contract do not grant the Customer any rights to, or in, patents, copyrights, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services.

10.2 HPL confirms that it has all the rights in relation to the Services that are necessary to grant all the rights it purports to grant under, and in accordance with, the Contract.

10.3 HPL hereby grants to the Customer a non-transferable, non-exclusive, revocable licence to use the Services during the Subscription Term.

10.4 The licence granted to the Customer is strictly limited to, and the Customer shall use the Services for, the purpose as described in the Contract only.

10.5 Subject to clause 3.5(c), the Customer shall not grant sub-licences, in whole or in part, of any of the rights granted under the Contract, or sub-contract any aspects of exploitation of the rights licensed to it, without HPL's prior written consent.

11. Confidentiality

- 11.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Contract. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
 - (b) was in the other party's lawful possession before the disclosure;
 - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 11.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party (other than its employees, officers, auditors and professional advisers who necessarily require access to the Confidential Information of the disclosing party in consequence of the performance of the receiving party's obligations or rights under this Contract), or use the other's Confidential Information for any purpose other than the implementation of the Contract.
- 11.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the Contract.
- 11.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 11.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute HPL's Confidential Information.
- 11.6 HPL acknowledges that the Customer Data is the Confidential Information of the Customer.
- 11.7 The Customer agrees that HPL may refer to the Customer in its advertising and promotional material (including the Website), for the purposes of marketing the Services to potential customers.
- 11.8 This clause 11 shall survive termination of the Contract, however arising.

12. Indemnity

12.1 The Customer shall defend, indemnify and hold harmless HPL against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services.

12.2 Subject to clause 13.4(b), HPL shall defend the Customer, its officers, directors and employees against any claim that the Services infringe any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

- (a) HPL is given prompt notice of any such claim;
- (b) the Customer provides reasonable co-operation to HPL in the defence and settlement of such claim, at HPL's cost and expense; and
- (c) HPL is given sole authority to defend or settle the claim.

12.3 In the defence or settlement of any claim, HPL may: (a) procure the right for the Customer to continue using the Services; (b) replace or modify the Services so that they become non-infringing; or (c) if such remedies are not reasonably available, terminate the Contract on 10 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

12.4 In no event shall HPL, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

- (a) a modification of the Services by anyone other than HPL; or
- (b) the Customer's use of the Services in a manner contrary to the instructions given to the Customer by HPL; or
- (c) the Customer's use of the Services after notice of the alleged or actual infringement from HPL or any appropriate authority.

12.5 The foregoing and clause 13.4(b) state the Customer's sole and exclusive rights and remedies, and HPL's (including HPL's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

13. Limitation of liability

13.1 This clause 13 sets out the entire financial liability of HPL (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:

- (a) arising under or in connection with these Terms or the Contract;

- (b) in respect of any use made by the Customer of the Services or any part of them; and
- (c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with these Terms or the Contract.

13.2 Except as expressly and specifically provided in these Terms or the Contract:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Services, and for conclusions drawn from such use. HPL shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to HPL by the Customer in connection with the Services, or any actions taken by HPL at the Customer's direction;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from these Terms and the Contract; and
- (c) the Services are provided to the Customer on an "as is" basis.

13.3 Nothing in these Terms or the Contract excludes the liability of HPL or the Customer:

- (a) for death or personal injury caused by HPL's negligence;
- (b) for fraud or fraudulent misrepresentation;
- (c) any other liability that cannot be excluded or limited by English law; or (d)

in the case of the Customer, in relation to the indemnity set out in clause 5.9.

13.4 Subject to clause 13.2 and clause 13.3:

- (a) HPL shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any:
 - (i) loss of profits;
 - (ii) loss of business;
 - (iii) loss of anticipated savings;
 - (iv) depletion of goodwill and/or similar losses;
 - (v) loss or corruption of data or information;
 - (vi) pure economic loss; or

(vii) special, indirect or consequential loss, costs, damages, charges or expenses however arising under these Terms and the Contract, and

- (b) HPL's total aggregate liability in contract (including in respect of the indemnity at clause 12.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of these Terms shall be limited to the aggregate of all sums paid by the Customer under the Contract.

14. Term and termination

14.1 This Contract shall, unless otherwise terminated as provided in this clause 14, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, the Contract shall be automatically renewed for successive periods of 12 months (each a "Renewal Period"), unless:

- (a) the Customer notifies HPL of termination at any time, in writing, giving not less than 90 calendar days prior to the end of the Initial Subscription Term or any Renewal Period with the termination to take effect at the end of the Initial Subscription Term or the then current Renewal Period (as applicable), or
- (b) otherwise terminated in accordance with the provisions of these Terms;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the "Subscription Term".

14.2 Without prejudice to any other rights or remedies to which HPL may be entitled, HPL may terminate the Contract at any time, without liability to the Customer, by providing the Customer with twelve months' written notice.

14.3 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract, by written notice, at any time and taking effect immediately or after such period as may be stated in the notice, without liability to the other if:

- (a) the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 28 days of that party being notified in writing of the breach; or
- (b) the other party repeatedly or persistently breaches any of the terms of the Contract in such a manner so as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;

- (c) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party; or
- (d) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
- (e) a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
- (f) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
- (g) the other party ceases, or threatens to cease, to trade; or
- (h) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

14.4 On termination and/or expiry of the Contract for any reason:

- (a) all licences granted under these Terms shall immediately terminate;
- (b) each party shall return and make no further use of any equipment, property and other items (and all copies of them) belonging to the other party;
- (c) unless required by Applicable Law to store any Customer Data (including Personal Data), HPL will destroy or otherwise dispose of any of the Customer Data in its possession unless HPL receives, no later than ten days after the effective date of the termination or expiry of the Contract, a written request from the Customer for the delivery to the Customer of an extract of the Customer Data hosted within the solution in accordance with clause 14.4(e);
- (d) HPL shall permit the Customer to access and download the Customer Data at any time until and including the date on which the Contract termination or expiry takes effect;
- (e) at any time up until the date of termination or expiry of the Contract, and for a period of ten days after the effective date of termination or expiry of the Contract, HPL shall (providing the Customer has paid all fees properly due and owing) within 5 days of receipt of a written request by the Customer deliver the extract of the Customer Data keep in accordance with clause 5.2 to the Customer and the Customer shall pay all costs and expenses incurred by HPL in so providing such Customer Data; and

- (f) the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

15. Force majeure

- 15.1 HPL shall have no liability to the Customer under the Contract if it is prevented from or delayed in performing its obligations under these Terms, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of HPL or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

16. Freedom of Information

- 16.1 To the extent that the Customer is subject to the requirements of the FOIA and the EIRs, HPL shall at the Customer's cost and expense:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and EIRs;
 - (b) transfer to the Customer all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within 5 Business Days of receipt;
 - (c) provide the Customer with a copy of all Information belonging to the Customer requested in the Request For Information which is in its possession or control in the form that the Customer reasonably requires within 10 Business Days of the Customer's request for such Information; and
 - (d) not respond directly to a Request For Information unless authorised in writing to do so by the Customer.
- 16.2 HPL acknowledges that the Customer may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information). The Customer shall notify HPL of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) that relates to this Contract and shall consult with HPL regarding any Request for Information that relates to this Contract prior to the disclosure of any Information. Notwithstanding any other provision in this Contract, the Customer shall be responsible for determining in its absolute discretion whether any Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs, but it shall not disclose any of the Commercially Sensitive Information without the prior written consent of HPL.

17. General

- 17.1 Assignment and other dealings. HPL may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of HPL which is not to be unreasonably withheld.
- 17.2 Notices. Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next Business Day delivery service, commercial courier or fax. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in this clause 17.2; if sent by pre-paid first class post or other next Business Day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one Business Day after transmission. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 17.3 Severance. If any provision or part-provision of the Contract 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 the Contract. If one party gives notice to the other of the possibility that any provision or part-provision of the Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 17.4 Waiver. A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 17.5 Third party rights. A person who is not a party to the Contract shall not have any rights to enforce its terms.

- 17.6 Variation. Except as set out in the Contract, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by HPL and the Customer.
- 17.7 Governing law. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
- 17.8 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).