

**PAMWIN PLUS SOFTWARE
LICENCE SCHEDULE**

CUSTOMER:	(the " Customer ").
DISTRIBUTOR:	M3 HOUSING LIMITED , a company registered in England and Wales with company number 49665825, having its registered office at 5 Commonsides East, Mitcham, Surrey CR4 2QA (the " Distributor ").

LICENSED USERS

Number of Licensed Users:

This Licence Schedule is subject to and hereby incorporates the terms of the Distributor's standard terms and conditions and the PAMWIN Standard Terms (both of which are attached to this Licence Schedule). By signing this Licence Schedule you confirm that you accept and agree to all such terms.

Signed for and on behalf of	Signed for and on behalf of M3 Housing Limited:
Signed	Signed
Date	Date

STANDARD TERMS FOR PAMWIN

1. Subject to paragraph 1.1, in these Standard Terms, capitalised words and phrases have the meanings given in the Agreement.

1.1 Notwithstanding anything to the contrary in the Agreement, where used in these Standard Terms the following words and phrases shall have the following meanings:

“Acceptance Testing Period” Means two months from the Effective Date or any other period of time agreed between the Parties during which the Customer can test that the Product meets their requirements;

"Agreement" means the standard terms and conditions of M3 Housing Ltd, which are attached to this document;

“Housing Corporation” means the government agency or its successor that funds new affordable homes and regulates housing associations in England and shall be deemed for the purposes of this Agreement to include equivalent bodies in Scotland and Wales;

"Licence Schedule" means the schedule attached to these Standard Terms which allows the Customer to specify the number of Licensed Users who can use the Software;

“Licensed User” means a person identified by the Software as permitted to enter data or any number of additional people permitted by the Software to access the data without altering it. For the avoidance of doubt:

i) a Licensed User may access the Software from more than one computer provided they do not do so concurrently; and

ii) the name and access permissions of the Licensed User may be changed provided that the number of Licensed Users does not at any time exceed the number for which licenses have been granted;

“Pamwin User Group” means a meeting to which all Customers of the Pamwin Plus system have been invited to be represented to discuss the development of the Product and related services;

“Quotation” means a written statement from the Distributor of the Initial Fee and Annual Fee to be paid for Pamwin Plus and related services;

"RSL" means a Registered Social Landlord as defined in the 1988 Housing Act and shall also be deemed in this Agreement to include a local authority housing department or any organisation providing housing management services on their behalf;

“Service Agreement” **Level** means an agreement approved and amended from time to time by agreement between the Distributor and the Pamwin User Group governing the extent and standards to which a support service should be provided by the

Distributor (a copy of the latest Service Level Agreement is attached hereto as Annex A); and

"Software" means the Pamwin Plus software.

Grant

2. Subject to, and in consideration of the payment of the Initial Fee and the Annual Fee, the Distributor grants the Customer a non-exclusive, non-transferable licence to use the Software in accordance with these Standard Terms and the terms and provisions of the Agreement.
- 2.1 This licence shall enable the number of Licensed Users specified on the Licence Schedule to access the Software.

Use

3. The Software shall constitute a Product for the purposes of the Agreement.
4. For the purposes of paragraph 2, "use" of the Software shall be restricted to use in object code form only, by the Customer for the purposes and in the manner specified herein, and the Customer acknowledges that additional fees may be payable for any additional use or change of use approved by the Distributor.
5. The Customer shall have no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify or make error corrections to the Software in whole or in part in this Contract or to the extent permitted by Statute.

Authorised Users

6. The Software may be installed only on computers and servers owned by the Customer or used by it in the normal course of its business, and may not be installed on the systems of any other entity or organisation (including Affiliates of the Customer) except as provided in these Standard Terms or otherwise with the written consent of the Distributor.
7. The Customer shall ensure that only Licensed Users have access to the Software and shall take all reasonable precautions to keep the Software usernames and passwords safe and confidential.
8. Upon receiving a written request from the Distributor, the Customer shall provide the Distributor with an up-to-date list of all Licensed Users of the Software..
9. The Software may be used and accessed only by Licensed Users who are:
 - 9.1 employees of the Customer; or
 - 9.2 contractors and other third parties providing services to the Customer (including by local and remote access), provided that they access and use the Software only via the Customer's servers and computers described in paragraph 6.
 - 9.3 Subject to paragraph 10, the Software may not be used by the Customer to provide services to any third parties, except with the prior written permission of the Distributor.
10. The Customer may use the Software to provide services to third parties (including RSLs) for whom they are making bids for funding to the Housing Corporation. All other terms of these Standard Terms and the Agreement shall continue to apply.

User Access

11. The Customer shall have sole responsibility for setting and managing the Licensed User's access privileges to the Software using the functionality therein.
- 11.1 The Customer shall have sole responsibility for setting and providing the Licensed Users with passwords to access the Software and thereafter shall be solely responsible for managing the use of the passwords. The Distributor shall have no responsibility for the use or loss of these passwords.

Support Services

12. Subject to, and in consideration of, the payment of the Annual Fee the Distributor shall, during the year to which that Annual Fee relates, provide Support Services to the Customer under the terms of a Service Level Agreement, which includes:
 - 12.1 The availability of a helpdesk facility to respond to queries made by telephone and email, usually within one Business Day.
 - 12.2 Response to bug reports prioritised according to defined criteria for judging their impact within two Business Days, such response to include one or more of the following, at the Distributor's sole discretion:
 - 12.2.1 a fix for the bug;
 - 12.2.2 a workaround to enable the Customer to continue using the feature for which a bug has been reported, or
 - 12.2.3 a timetable for resolution.
 - 12.3 Making available regular updates to the Software to remedy bugs or to enhance existing features, though it shall be the Customer's responsibility to install such updates.
 - 12.4 Making available upgraded versions of the Software that may include enhancements to the performance or features of the Software and enabling use of the Software to prepare bids for grant funding under the Housing Corporation's grant funding procedures. It shall be the Customer's responsibility to install such upgrades.

Fees

13. The Distributor may charge an Initial Fee to purchase the Software and an Annual Fee for the licence to use the Software and receipt of the Support Services
 - 13.1 The Customer acknowledges that the Annual Fee may be varied in accordance with the terms of the Agreement.
 - 13.2 The Initial Fee and Annual Fee are set out in a Quotation and are determined in relation to the number of Licensed Users.
 - 13.3 The Distributor will charge standard rates for the Initial Fee and Annual Fee and will notify the Customer of any changes to the standard rates which will remain confidential between Customers and the Distributor and will not be published.
 - 13.4 Annual Fees will be increased in accordance with the Agreement except where any additional increase has been approved by a majority of Customers represented at a

meeting of the Pamwin User Group to which all Customers have been invited with at least 21 days notification and have been given the opportunity to vote by proxy.

- 13.5 If the Customer fails to make payment of any Fees when due then, without prejudice to any other right or remedy the Distributor may have, the Distributor shall be entitled to suspend the Service (including the licence to use the Software) by notice to the Customer until such payment is made in full.

Acceptance

14. If the Customer terminates this agreement during the Acceptance Testing Period the Distributor will refund the Initial Fee and the Annual Fee in full. The Customer will remain liable for the charges for all services that have been delivered including charges for any configuration or tailoring of the Product that has been partially carried out or completed by the Distributor.
15. The Acceptance Testing Period will be deemed to have ended when the time agreed between the parties has expired or when training is delivered to the majority of the Licensed Users, whichever occurs first.

Annex A

Service Level Agreement for Support

(As approval by Pamwin User Group 20th April 2006)

- 1) Telephone & email support is available during “office hours” between 9.00am and 5.00 pm Mon – Fri except bank holidays
 - a) Emails to the support mailbox and any telephone messages on the support line are checked hourly during office hours
 - b) Mobile phones and remote access are used to extend cover on the rare occasions when none of the support team are in the office
 - c) wherever possible support calls are dealt with there & then
 - d) where problems cannot be resolved immediately, they are classified as described below
 - e) We expect 100% of support calls to achieve a response within the following times, and where this requires a fix to the software, for 95% to be fixed within the times specified below, and top priority to be given to any problems that fail to meet those times:

Category	defined as	response time	Escalation
0 “How to” enquiry	General question on how to use the system or how to interpret a result	Immediate if possible	To an expert for response within 1 working day
1 Emergency	system becomes unusable	Immediate attention	Immediate allocation of resource required to fix or find a work around within 4 hours of a working day
2 Very urgent	system becomes unusable and no workaround can be offered	Immediate attention and 4 hours to respond with initial diagnosis	Programmers to fix and test any bug within 8 hours (of the working day)
3 Urgent	Failure to meet an essential business need eg KPIs cannot be generated on an appraisal, standard report cannot be run, unexplained changes to KPIs, or serious cash flow discrepancies	1 working day to respond with initial diagnosis	Refer to programmers to fix any bug within 5 working days
4 Normal	all others	2 working days to respond	Refer to programmers to fix any bug within four weeks
Low risk enhancement	Additional outputs to reports	Assessment of risk and relevance to other users and agree specification within two weeks	Include in next upgrade or refer to user group for approval. If urgent, agree price to be paid by client and delivery timetable
Medium risk enhancement	Changes to data structure including additional fields or field sizes	Assessment of risk and relevance to other users and agree specification within one month	Include in next release or refer to user group for approval. If urgent, agree price to be paid by client and delivery timetable
High risk enhancement	Changes to appraisal or cash flow or any core calculations	Assessment of risk and relevance to other users and agree specification within three months	Include in a release within the next year, or refer to user group for approval. If urgent, agree price to be paid by client and delivery timetable

- 2) All support calls are recorded and monitored against the above performance standard, the results of which are reported to the Pamwin User Group.
- 3) Annual review visit consists of

- a) Pre-visit examination of the client's Pamwin database to check assumptions and templates, and a review of support logs for the client to identify any problem areas
- b) a half day on site with the Pamwin supervisor and managers
- c) review of the way assumptions and templates are set up and check that these achieve the client's objectives
- d) review of the client's reporting requirements and how effectively these are met by Pamwin
- e) review of the client's training needs
- f) review of planned changes in forthcoming releases of Pamwin to ensure their implications are understood and deal with any problems that might be foreseen.

Dave Treanor

Revised 24th April 2006 as agreed at the Pamwin User Group 20th April 2006

M3 HOUSING LTD

STANDARD TERMS AND CONDITIONS

M3 Housing Limited, a company incorporated and registered in England & Wales with company number 04966582 whose registered office is at 5 Commonside East, Mitcham, Surrey CR4 2QA, (the "**Distributor**") is the appointed distributor and licensor of certain software applications, products and services. You (the "**Customer**") wish to use the software, products and services in accordance with the terms set out in this Agreement and as may be otherwise agreed between the Distributor and the Customer from time to time. Each of the Distributor and the Customer is a "**Party**" and are together the "**Parties**".

1. INTERPRETATION

1.1 In this Agreement, the following words and phrases shall, unless the context otherwise requires, have the following meanings:

"Affiliate" means and includes each and any subsidiary or holding company of the Distributor and each and any subsidiary of a holding company of the Customer;

"Agreement" means these standard terms and conditions;

"Annual Fee" means, in respect of each Contract, the amount payable by the Customer on the relevant Effective Date and on each Renewal Date in respect of the provision or licence of Products or Services for the year beginning on that date, as specified in the relevant Contract and calculated in accordance with Clause 4.2;

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

"Contract" means an agreement entered into between the Parties for the supply or licence of specified Products or Services to the Customer by the Distributor, the terms of which are those set out in this Agreement and in the relevant Standard Terms;

"Effective Date" means, in respect of each Contract, the date on which the Customer's offer to purchase Products and/or Services from the Distributor, made by way of an Order, is accepted by the Distributor in accordance with Clause 2.2;

"Event of Force Majeure" means an event which falls within one or more of the following categories:

a) riot; civil unrest; military action or terrorism;

b) earthquake, storm, flood or other natural disaster; or

c) deliberate sabotage of, or malicious damage to or destruction of premises, equipment or data (not attributable to the affected Party or any of its employees);

"Fees" means the fee set out in the relevant section of this website or as otherwise agreed between the Distributor and the Customer, payable by the Customer to the Distributor in accordance with Clause 4, including the

Initial Fee and the Annual Fee;

"Housing Unit"	means an individual housing unit managed by the Customer (including bedsit and hostel units) that is let under a separate tenancy or occupancy agreement, and including a unit in which the Customer does not hold a property interest but in respect of which the Customer provides commissioning and maintenance services or services involving the use and/or access by the Customer of the Products or the Services;
"Initial Fee"	means the initial amount payable by the Customer on the relevant Effective Date in respect of the licence or provision of Products or Services under a Contract, as specified in the relevant Contract and calculated in accordance with Clause 4.2;
"Intellectual Property Rights"	means all patents, copyrights, design rights, trade marks, service marks, trade secrets, know-how, database rights, goodwill and rights in reputation (whether registered or unregistered) and all applications for the same, anywhere in the world;
"Modifications"	any change, amendment, modification or enhancement to, or upgrade or revision (not being a New Version) of, a Product which from time to time is generally offered to the Distributor's customers (whether on a gratuitous basis or for payment) in the course of its normal business;
"New Version"	means any new version of a Product which is made publicly available for sale by the Distributor from time to time in the course of its normal business;
"Order"	means an order form (electronic or otherwise), completed by the Customer and submitted to the Distributor setting out the details of the particular Products and/or Services ordered by the Customer in accordance with this Agreement;
"Product"	means the software (together with any Modifications thereto) and/or goods to be licensed or provided by the Distributor to the Customer under this Agreement as set out in a Contract, together with any associated documentation;
"Renewal Date"	means each anniversary of the date of a Contract;
"RPI"	means the monthly retail price index (all items) as published by the Office for National Statistics and available at www.statistics.gov.uk ;
"Service Levels"	means, where relevant, the service levels to which a particular Service is to be provided, as set out in the relevant Standard Terms;
"Service"	means a service (which may include a Support Service) to be provided by the Distributor to the Customer under this Agreement as set out in a Contract, together with any associated documentation;

"Standard Terms" means, in relation to each Product and Service, the standard terms set out on the website www.m3h.co.uk which shall apply to the licence or provision of that Product or Service by the Distributor to the Customer in accordance with Clause 2.3;

"Support Services" means the support and maintenance services provided by the Distributor to the Customer in accordance with the Support Terms and as may be specified in a Contract;

"Support Terms" means the support terms set out in the relevant Standard Terms which, unless otherwise stated, shall apply to the provision of Support Services;

1.2 The headings in this Agreement do not affect its interpretation. Save where the context otherwise requires, references to clauses are to clauses of this Agreement.

1.3 Unless the context requires otherwise:

1.3.1 references to the Distributor and the Customer include their permitted successors and assigns;

1.3.2 references to statutory provisions include those statutory provisions as amended or re-enacted; and

1.3.3 references to any gender include all genders.

1.4 In the case of conflict or ambiguity between any provision contained in the body of this Agreement, any provision contained in any Standard Terms, and any special provision, the following order of precedence shall apply:

1.4.1 any special provisions set out in an Order which have been expressly accepted by the Distributor;

1.4.2 provisions set out in the Standard Terms; and

1.4.3 the body of this Agreement.

2. **ABOUT THE AGREEMENT**

Agreement and Contracts

2.1 The Distributor agrees to license and provide Products and Services to the Customer as shall be set out in each Contract. Each Contract shall comprise the relevant Standard Terms and the terms and provisions of this Agreement.

2.2 By completing and submitting an Order, the Customer is making an offer to purchase Products and/or Services which, only if accepted by the Distributor, will result in a binding Contract between the Parties, effective as of the Effective Date. For the purposes of this Clause 2.2, an Order shall not be considered to have been accepted unless the Distributor has expressly confirmed its acceptance thereof in writing (which may include by an email sent by the Distributor to the Customer).

2.3 The provision of the Products and Services by the Distributor to the Customer under a Contract shall be subject to this Agreement and the relevant Standard Terms.

2.4 Any Support Services to be provided by the Distributor to the Customer under an Order shall be subject to the Support Terms.

- 2.5 The Distributor may engage individuals or organisations on a sub-contract or consultancy basis, as the Distributor sees fit, to provide any of the Products or Services.

Performance of Services

- 2.6 The Distributor will use reasonable endeavours to meet any time scales or other performance objectives set for the delivery of the Products or performance of the Services, including any Service Levels set out in the Standard Terms or a Contract.
- 2.7 If the Distributor performs any services at the Customer's request which are not specified in a Contract, then, unless the Parties agree otherwise in writing, the provisions of this Agreement shall apply to those services so performed and if no fee is agreed in writing for these services the Distributor shall be paid on a time and materials basis at its prevailing rate of charges.
- 2.8 The performance of the Services is conditional upon the Customer's fulfilment of its obligations under this Agreement or as set out in the Contract. The Customer shall provide the Distributor with all necessary information, data, documents, facilities, support, services and co-operation reasonably required by the Distributor for the proper performance of the Services and within sufficient time to enable the Distributor to perform those Services in accordance with the Contract. The Customer acknowledges that any delay or failure by it to provide the same may result in the Distributor being unable to meet any agreed timetable or budget. The Customer shall be responsible for ensuring the accuracy and completeness of all documentation, information and materials provided to the Distributor and the Distributor shall be entitled to rely upon such material as being accurate and complete without seeking to verify or check it.
- 2.9 For the avoidance of doubt, the Distributor shall be under no obligation to supply any hardware, or any software or goods other than the Products, or any services other than the Services, to the Customer.

3. RENEWALS AND CHANGES IN UNITS OR USERS

- 3.1 Prior to each Renewal Date, the Customer shall inform the Distributor, as required by the relevant Standard Terms, of:
- 3.1.1 the number of Housing Units; and/or
 - 3.1.2 the number of individual users whom the Customer wishes to authorise to use and/or access the Products or the Services; and/or
 - 3.1.3 any other information reasonably requested by the Distributor.
- 3.2 If during any year beginning on the date or anniversary of the relevant Effective Date, either the number described in paragraph 3.1.1 or 3.1.2 increases beyond the number set out in the relevant Contract for which the Customer has been granted a licence in respect of the Products or Services (including as a result of a merger, acquisition or other corporate change involving the Customer), the Customer shall promptly notify the Distributor of the extent of such increase.

4. FEES

- 4.1 The Customer agrees to pay to the Distributor all Fees due under this Agreement as set out in the relevant Contract, including the Initial Fee and, where applicable, the Annual Fee. All sums are exclusive of VAT, which will be payable in addition to the Fees by the Customer.

- 4.2 The Initial Fee, and the Annual Fee, shall be calculated in accordance with the Distributor's rates in effect at the relevant Renewal Date, and such rates can be accessed at the URL <http://www.m3h.co.uk/Home/orderform.htm> or shall be supplied to the Customer in paper form upon request.
- 4.3 In the event that either of the numbers referred to in Clause 3.1 has at any Renewal Date increased beyond the previous number notified by the Customer to the Distributor, the Distributor shall inform the Customer of the Annual Fee payable in respect of the year beginning on the relevant Renewal Date. Save as expressly agreed in writing, the terms of the original Contract and this Agreement shall continue to apply.
- 4.4 In the event that any increase of the kind described in Clause 3.2 occurs, the Customer shall be liable to pay an increased Initial Fee and Annual Fee in accordance with the Distributor's rates in effect at the date of such increase (pro-rated for number of full or partial months remaining from the date of such increase until the next Renewal Date), and the Distributor shall inform the Customer of the revised Initial Fee and Annual Fee.
- 4.5 If the Customer fails to pay any amount payable by it under this Agreement or a Contract, the Distributor shall (in addition to its other rights under this Agreement or the relevant Contract) be entitled but not obliged to charge the Customer interest on the overdue amount, payable by the Customer forthwith on demand, from the due date up to the date of actual payment, after as well as before judgment, at the rate of 3% per annum above the base rate for the time being of Barclays Bank Plc. Such interest shall accrue on a daily basis and be compounded quarterly. The Distributor reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

5. **VARIATION OF FEES**

- 5.1 Except as expressly permitted to increase the Initial Fee and/or Annual Fee under this Agreement, the Distributor may (subject to any provision to the contrary in any Standard Terms) vary its Fees not more than once in every successive period of 12 months during the term of the applicable Contract by giving not less than 30 days' notice to the Customer.
- 5.2 Subject to any provision to the contrary in any Standard Terms, any of the Fees may be increased by the Distributor with prior notice to the Customer, but by no more than the greater of:

- 5.2.1 two percent per annum greater than the percentage change recorded since the date of the last increase calculated in accordance with the following formula

$$NF = CF \times ((b/a) \times 1.02)^n$$

Where

NF means the new Fee

CF means the current Fee

a means the RPI (all items) sum for the month in which the previous increase calculation was performed, as published by the Office for National Statistics in document RP02

b means the RPI (all items) sum for the immediately preceding month prior to the date on which the increase calculation is made, as published by the Office for National Statistics in document RP02

n means the number of full years since the previous increase calculation.

5.2.2 10%

Updated information regarding Fees shall be posted on www.m3h.co.uk and shall be available in written form upon request.

6. DISTRIBUTOR'S WARRANTIES AND LIMITS OF LIABILITY

6.1 The Distributor makes no warranty as to the performance or results the Customer may obtain by using the Products or Services nor does the Distributor warrant that the Customer's use of the Products will be uninterrupted or error free.

6.2 The Distributor undertakes to use reasonable skill and care in the provision of the Services.

6.3 All other conditions, warranties or other terms which might have effect between the Parties or be implied or incorporated into this Agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded to the fullest extent permitted by law, including, without limitation, any implied conditions, warranties or other terms as to quality or fitness for purpose.

6.4 Except as expressly stated in Clause 6.5:

6.4.1 The Distributor shall have no liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, which fall within any one of the following categories:

- (a) special damage even though the Distributor was aware of the circumstances in which such special damage could arise;
- (b) loss of profits; anticipated savings (including in respect of overheads); business opportunity or goodwill; and
- (c) loss of data.

6.4.2 The total liability of the Distributor, whether in contract, tort or otherwise and whether in connection with this Agreement, a Contract or any collateral contract, shall in no circumstances exceed the total sums payable and paid by the Customer during any 12 month period.

6.4.3 The Customer acknowledges and agrees that no representations were made prior to entering into this Agreement and that, in entering into this Agreement, it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this Agreement. The Customer shall have no remedy in respect of any representation (whether written or oral) made to it upon which it relied in entering into this Agreement and the Distributor shall have no liability otherwise than pursuant to the express terms of this Agreement.

6.5 The exclusions in Clause 6.4 shall apply to the fullest extent permissible at law but the Distributor does not limit or exclude liability for death or personal injury caused by the negligence of the Distributor, its officers, employees, contractors or agents, for fraud, for breach of the obligations implied by s.12 Sale of Goods Act 1979 or s.2 Supply of Goods and Services Act 1982 or for any other liability which may not be excluded by law.

7. INDEMNITY

The Customer agrees to indemnify and hold the Distributor, its employees, agents, Distributors and business partners, harmless against all and any claims, damages, losses, costs and expenses, including legal fees, arising out of the breach of this Agreement or a Contract or any other liabilities arising out of the use of the Products or Services by the Customer or any other person whose access to them is attributable to the Customer or its employees, contractors, sub-contractors and consultants.

8. INTELLECTUAL PROPERTY RIGHTS

8.1 The Customer acknowledges that no Intellectual Property Rights in the Products (including any Modifications) or any work or materials arising from the performance of the Services belong to the Customer, and the Customer shall have no rights in or to the Products or such work or materials other than the right to use them in accordance with the terms of this Agreement and the relevant Contract.

8.2 Subject to the provisions of Clause 8.3, the Distributor will indemnify the Customer and keep the Customer indemnified from and against any and all claims made against the Customer alleging that the normal use of a Product or Products permitted under this Agreement infringes the Intellectual Property Rights of a third party (a "Claim"). Such indemnity will include all losses, costs and expenses incurred by the Customer as a consequence of a Claim.

8.3 Immediately upon becoming aware of a Claim which might give rise to any liability on the Distributor to indemnify the Customer under Clause 8.2 the Customer will:

8.3.1 give written notice of the Claim to the Distributor;

8.3.2 make no settlement or compromise of the Claim without prior notice to the Distributor;

8.3.3 allow the Distributor to assume the control and conduct of the defence and settlement of the Claim; and

8.3.4 at its own expense give such reasonable assistance as may reasonably be required by the Distributor in the defence, settlement or compromise of the Claim.

8.4 In connection with the control and conduct of the defence and settlement of the Claim the Distributor will:

8.4.1 keep the Customer informed of relevant matters; and

8.4.2 make no settlement or compromise of the Claim without prior notice to the Customer.

8.5 In the event that a barrister of at least seven years' call provides a written opinion that judgment in respect of the Claim is, on a balance of probabilities, likely to be given against the Customer, the Distributor may at its own option and expense:

8.5.1 procure for the Customer the right to continue using the relevant Product(s) in the manner contemplated by this Agreement; or

8.5.2 replace or modify the relevant Product(s) so that they no longer infringe the rights of any third party (provided that any such replacement or modification of the Products will not materially affect the functionality of the Product(s)); or

8.5.3 in the event that neither of the options (1) and (2) above is available, terminate this Agreement.

8.6 The indemnity contained in Clause 8.2 will not extend to any Claim which arises as a result of:

8.6.1 any modifications to the Products made by any person other than the Distributor, its employees and agents or any other person where such modifications have not been authorised by the Distributor; or

8.6.2 use of the Products for a purpose not specified in this Agreement or otherwise contemplated by this Agreement.

9. TERMINATION

Term and Termination

9.1 This Agreement commences on the Effective Date of the first Contract entered into hereunder and unless otherwise terminated in accordance with this Clause 9 shall continue for an initial period of 5 years, and from year to year thereafter.

9.2 The Distributor may terminate:

9.2.1 this Agreement and/or any Contracts immediately by notice in writing to the Customer if the Customer's use of any Products or Services is in breach of any applicable law or regulation; or

9.2.2 this Agreement and/or any Contracts immediately by notice in writing to the Customer if the Customer is in material breach of any of its obligations under this Agreement and/or any Contract and, where that breach is capable of remedy, the Customer fails to remedy the breach within thirty (30) days of receiving notice specifying the breach.

9.3 Either Party may terminate this Agreement and/or any Contract immediately by notice in writing to the other Party:

9.3.1 if any of the following events (or any event analogous to any of the following occurs in a jurisdiction other than England & Wales) occurs in respect of the other Party:

(a) a proposal is made for a voluntary arrangement within Part I of Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;

(b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);

(c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to s.98 of Insolvency Act 1986;

(d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or

(e) an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;

- (f) it is or becomes insolvent within the meaning of s.123 Insolvency Act 1986; or
- (g) a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

9.3.2 in the circumstances set out in Clause 10.3.

9.4 Subject to the other terms of the Agreement, either Party may terminate this Agreement at any time on 30 days' written notice to the other.

Consequences of Termination

9.5 Termination of the Agreement or any Contract shall be without prejudice to any other Contracts ongoing at the time of termination, and such Contracts shall continue in full force and effect and subject to the terms and conditions set out in the Agreement until expiry or termination.

9.6 Termination of the Agreement for any reason shall not affect any rights or obligations of either Party which have accrued prior to such termination.

9.7 Termination shall not relieve the Customer from its obligation to pay all outstanding Fees under the Agreement.

9.8 Upon termination of any Contract, the Customer shall (and shall ensure that all third parties shall) delete any electronic copies of, and cease to use, all Products and any documentation provided under the relevant Contract (including any direct or indirect derivations of the same) and destroy any physical copies of the same, except to the extent that the Customer requires copies of any documentation for the purposes of fulfilling any obligations which it is under in respect of the maintenance of records.

10. FORCE MAJEURE

10.1 Subject to the remaining provisions of this Clause 10, either Party shall be released from its obligations (other than an obligation to pay money) under this Agreement or a Contract to the extent that that Party is delayed, hindered or prevented from performing those obligations by an Event of Force Majeure and that such Event of Force Majeure was beyond that Party's reasonable control.

10.2 The Party claiming to be affected by an Event of Force Majeure will not be entitled to invoke the provisions of Clause 10.1 unless:

10.2.1 on becoming aware of any Event of Force Majeure which gives rise, or which is likely to give rise, to any failure or delay in the performance of its obligations under this Agreement or a Contract (as appropriate), it notifies the other Party as soon as practicable, giving details of the Event of Force Majeure, the obligations on its part which are affected and its reasonable estimate of the period for which such failure or delay will continue; and

10.2.2 it provides written confirmation and reasonable evidence of such Event of Force Majeure within 10 Business Days of a request for the same; and

10.2.3 it takes all reasonable steps to overcome and mitigate the effects of such Event of Force Majeure.

10.3 If a Party is prevented from performing its obligations under this Agreement or a Contract by an Event of Force Majeure which continues for more than 90 days then either Party shall be entitled to terminate this Agreement and/or the relevant Contract (as appropriate) without liability to the other party forthwith on giving written notice of termination to the other party in accordance with Clause 9.3.2.

11. **CONFIDENTIALITY AND PUBLICITY**

11.1 Each Party agrees and undertakes that during the term of this Agreement and thereafter it will keep confidential, and will not use for its own purposes nor without the prior written consent of the other disclose to any third party, any information of a confidential nature (including trade secrets and information of commercial value) which may become known to such Party from the other Party and which relates to the other Party or any of its Affiliates unless:

11.1.1 such information is public knowledge or already known to such Party at the time of disclosure or subsequently becomes public knowledge other than by breach of this Agreement or subsequently comes lawfully into the possession of such Party from a third party; or

11.1.2 such Party is under a legal or regulatory obligation to disclose such information.

11.2 The terms of this Agreement and each Contract are confidential and may not be disclosed by the Customer without the prior written consent of the Distributor.

11.3 The provisions of this Clause 11 shall remain in full force and effect notwithstanding any termination of this Agreement.

12. **DATA PROCESSING**

12.1 To the extent that the Distributor gets access to any personal data from the Customer or in the exercise of its obligations under this Agreement (where personal data is defined in the Data Protection Act 1998), the Customer agrees that the Distributor acts as a data processor (as defined in the Data Protection Act 1998) for such personal data. The Customer authorises the Distributor to appoint sub-contractors as further data processors on the Customer's behalf provided that such further data processors are engaged on terms providing equivalent rights to the Customer against the further data processors and equivalent protections in relation to such personal data to those set out in this Agreement.

12.2 The Distributor shall process such personal data only in accordance with this Agreement and the Customer's instructions and shall ensure that the Distributor has taken steps to ensure the reliability of those of its employees who are used to process such personal data.

12.3 The Distributor warrants that it has appropriate operational and technological processes and procedures in place to safeguard against any unauthorised access, loss, destruction, theft, use or disclosure of such personal data.

12.4 The Customer may, upon reasonable notice and subject to Clause 11, audit the Distributor's processes to determine compliance with the foregoing provisions of this Clause 12.

13. **WAIVER**

No forbearance or delay by either Party in enforcing its rights will prejudice or restrict the rights of that Party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

14. **SEVERABILITY**

If any provision of this Agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of the provisions will not be prejudiced.

15. **AMENDMENTS**

No amendment, waiver or variation of this Agreement shall be binding on the Parties unless it is set out in writing, expressed to amend this Agreement and agreed in writing by each of the Parties.

16. **THIRD PARTY RIGHTS**

No term of this Agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Agreement, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

17. **NOTICES**

17.1 Notices shall be in writing, and shall be sent to the other Party marked for the attention of the person at the address set out for such Party in this Agreement. Notices may be sent by first-class mail, e-mail or facsimile transmission provided that facsimile transmissions are confirmed within 24 hours by first-class mailed confirmation of a copy. Correctly:

17.1.1 addressed notices sent by first-class mail shall be deemed to have been received 72 hours after posting (and, in the case of the Distributor, a notice shall be correctly addressed if it is addressed to [M3 Housing Ltd, 5 Commonsides East, Mitcham, Surrey CR4 2QA]);

17.1.2 emailed notices shall be deemed to have been received at the time that the email enters the information system of the intended recipient provided that no error message indicating failure to deliver has been received by the sender and provided further that within 24 hours of transmission a hard copy of the email is sent by post to the intended recipient;

17.1.3 directed facsimile transmissions shall be deemed to have been received instantaneously on transmission provided that they are confirmed as set out above,

provided in either case that the day of deemed receipt is a Business Day and, if it is not, then the day of deemed receipt shall be the next Business Day thereafter.

18. **ASSIGNMENT**

18.1 Except, and subject to, as expressly provided for in this Agreement or a Contract, the Customer shall have no right to:

18.1.1 sub-license or to assign the benefit or burden of any licence or other right to use the Products or receive the Services in whole or in part without the prior written consent of the Distributor, such consent not to be unreasonably withheld; or

18.1.2 allow the Products to become the subject of any charge, lien or encumbrance, without the prior written consent of the Distributor.

18.2 The Distributor may sub-license, assign, charge or otherwise transfer any of its rights or obligations under this Agreement or under a Contract, provided it gives written notice to the Customer of such any sub-licence, assignment, charge or other transfer.

19. **ENTIRE AGREEMENT**

This Agreement, the documents referred to herein, and any Contracts entered into between the Parties, contain the whole agreement between the Parties relating to the

matters dealt with therein and supersede all prior agreements, arrangements and understandings between the Parties relating to that subject matter.

20. **GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by and construed in accordance with English law and each Party hereby submits to the non-exclusive jurisdiction of the English courts.