



## M3 HOUSING LTD

### STANDARD TERMS

#### Introduction

You (the "**Customer**") wish to use the software, products and services set out in the Order which are to be supplied by M3 Housing Limited (the "**Distributor**").

The Order and these Terms form the contract between the Customer and Distributor. The Customer must read these Terms carefully, as they contain exclusions of the Distributor's liability at Clause 6.

#### The Terms

#### INTERPRETATION

1.1 In these Terms, the following words and phrases have the indicated meanings:

<b>"Affiliate"</b>	means and includes each and any subsidiary or holding company of the Customer and each and any subsidiary of a holding company of the Customer;
<b>"Annual Fee"</b>	means the amount payable on the Effective Date and on each Renewal Date set out in the Order or as calculated in accordance with Clause 4.2;
<b>"Business Day"</b>	means any day which is not a Saturday, a Sunday or a public holiday in England;
<b>"Consultancy Fee"</b>	means the amount payable for Consultancy Services set out in the Order and as varied in accordance with Clause 5.2 from time to time;
<b>"Consultancy Services"</b>	means the scope of consultant services described in an Order;
<b>"Contract"</b>	means an Order and these Terms;
<b>"Contractor"</b>	means an organisation that is contracted to provide services to the Customer, which may include works or consultancy services;
<b>"CPI"</b>	means the monthly consumer price index (all items) as published by the Office for National Statistics and available at <a href="http://www.statistics.gov.uk">www.statistics.gov.uk</a> ;
<b>"Customer Hosted Software"</b>	means software listed in the Order which is indicated to be hosted by the Customer or the Customer's service provider;
<b>"Data Protection Law"</b>	all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI



	2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party;
<b>“Data Subject”</b>	has the meaning set out in Data Protection Law;
<b>“Distributor Hosted Software”</b>	means software listed in the Order which is indicated to be hosted by the Distributor or the Distributor’s service provider;
<b>“Effective Date”</b>	means the date on which the Order is accepted by the Customer in accordance with Clause 2.2;
<b>“Electronic Format”</b>	means in a form that can be held on a computer or electronic storage media;
<b>“Fees”</b>	means the Initial Fee, the Annual Fee, the Consultancy Fee and the Variation Fees;
<b>“Full User”</b>	means a person identified by the Software as permitted to enter or alter data;
<b>“Hard Copy”</b>	means a printed copy;
<b>“Homes England”</b>	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 Contract to include equivalent bodies in Scotland and Wales;
<b>“Hosting Fee”</b>	means the fee payable by the customer for Distributor Hosted Software, as specified in the Order
<b>"Housing Unit"</b>	the total number of residential properties managed by the Customer, including managed leasehold properties, supported housing properties or privately owned/shared ownership properties;
<b>"Initial Fee"</b>	means the amount specified in the Order;
<b>“Initial Fixed Term”</b>	means the period specified in the Order;
<b>"Intellectual Property Rights"</b>	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;
<b>“Law”</b>	means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, any assimilated European Union law in force in England and Wales, the EU/UK Trade and Co-operation Agreement (so far as directly applicable under the



	European Union (Future Relationship) Act 2020), regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any regulatory body of which the Distributor is bound to comply;
<b>“Licence Period”</b>	means the Initial Fixed Term then each further year for which the Customer pays the Annual Fee, up to the Maximum Term;
<b>“M3 Schedules of Rates”</b>	means the schedules of rates products listed at Schedule 1;
<b>“Modifications”</b>	any change, amendment, modification or enhancement to, or upgrade or revision of, a Product which from time to time is generally offered to the Distributor’s customers (whether on a free issue basis or for payment) in the course of its normal business;
<b>“Maximum Term”</b>	means the period set out in the Order;
<b>“Order”</b>	means an order form which has been populated and accepted through the process set out at Clause 2.2;
<b>“PA 23”</b>	means the Procurement Act 2023;
<b>“Product User Group”</b>	means a meeting to which all Customers may be invited to be represented to discuss the development of the Product and related services;
<b>“Personal Data”</b>	personal data, as defined under Data Protection Law;
<b>“Product”</b>	means the software (together with any Modifications to it) and/or goods and/or products and/or Consultancy Services which are stated on the Order;
<b>“Read Only User”</b>	means a person who is able only to read or review reports or other information generated by Software but may not enter or alter data in respect of any Software;
<b>“Relevant Schedule(s)”</b>	means: (a) Schedule 1 where the Order includes Products listed in Schedule 1; and (b) Schedule 2 where the Order includes Software.
<b>“Renewal Date”</b>	means each anniversary of the date of the Effective Date;



<b>“Renewal Notice”</b>	means the notice served by the Distributor confirming the amounts of the Annual Fees due for Products provided during the period after each Renewal Date;
<b>“Service”</b>	means a service (which may include a Support Service) to be provided by the Distributor to the Customer under the Contract as set out in the relevant Schedule, together with any associated documentation;
<b>“Service Level Agreement”</b>	means an agreement approved and amended from time to time by agreement between the Distributor and the Product 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 as Annex A);
<b>“Service Levels”</b>	means, where relevant, the service levels to which a particular Service is to be provided, as set out in the Relevant Schedule;
<b>“Software”</b>	means Products which are software listed at the start of Schedule 2 and included in any Order;
<b>“Software Defect”</b>	means a material defect in Software which prevents the End User from using the main features of the Software;
<b>“Special Provisions”</b>	means any terms which modify these Terms set out in any Order;
<b>“Sub-Processor”</b>	means any third party which may receive and/or have access to Personal Data;
<b>“Support Services”</b>	means the support and maintenance services provided by the Distributor to the Customer as specified in the relevant Schedule;
<b>“Third Party Hosting Agreement”</b>	means the agreement between the Distributor and its hosting supplier, a redacted version of which is set out at Schedule 5;
<b>“UK GDPR”</b>	has the meaning given in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018;
<b>“User”</b>	means Full Users and Read Only Users;
<b>“Variation Fee”</b>	means any fees arising from the circumstances set out in Clause 5.1; and
<b>“Website”</b>	means <a href="https://www.m3h.co.uk/">https://www.m3h.co.uk/</a> .

- 1.2 In the case of conflict or ambiguity between any provision contained in the body of these Terms, any provision contained in any schedule, and any special provision, the following order of precedence shall apply:



- (a) any Special Provisions;
- (b) the provisions set out in the Relevant Schedules;
- (c) the body of these Terms; and
- (d) any other schedules to this Terms.

## 2. TERM AND GENERAL OBLIGATIONS

- 2.1 This Contract commences on the Effective Date and, unless terminated in accordance with Clause 9, shall continue for the Initial Fixed Term and then from year to year after that up to the Maximum Term.
- 2.2 A draft order shall be populated by either the Customer or Distributor on the Website or by email, such draft order to include the Customer's purchase order number and other details required by these Terms. Once finalised, the terms of the draft order may be accepted and shall become the Order when the Customer clicks to accept through the Website or accepts by email or signs the Order in hard copy.
- 2.3 The Distributor shall license and provide Products to the Customer in accordance with the Order, these Terms and the terms of the Relevant Schedule for the Licence Period.
- 2.4 The Customer shall comply with the terms of the Order and these Terms.
- 2.5 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 its obligations under this Contract and within sufficient time to enable the Distributor to perform such obligations. The Distributor may charge the Customer its additional costs of performing the Distributor's obligations under this Contract or any other losses, costs or expenses incurred by the Distributor as a result of any delay or failure by the Customer to comply with this clause.
- 2.6 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.
- 2.7 Each party shall promptly co-operate and provide all information within timescales set by the other party to assist with any procurement investigations as to the parties' compliance with the requirements of the PA 23.
- 2.8 The Distributor must immediately notify the Customer in writing and provide full particulars if any of the mandatory grounds for exclusion set out in Schedule 6 of the PA 23 or discretionary grounds for exclusion set out in Schedule 7 of the PA 23 apply or become applicable to the Distributor at any point during the term of this Contract.

## 3. RENEWALS AND CHANGES IN UNITS OR USERS

- 3.1 At least 90 (ninety) days before each Renewal Date, the Customer shall notify the Distributor of the information required by the Order which may include:



- (a) the number of Housing Units; or
- (b) the number of Users whom the Customer wishes to authorise to use and/or access the Products or the Services; and
- (c) any other information reasonably requested by the Distributor.

3.2 At any point during the Term, if the number of:

- (a) Housing Units increases by 10 (ten) per cent or more compared to the numbers set out in the Order or the numbers last notified to the Distributor under Clause 3.1; or
- (b) Users increases compared to the numbers set out in the Order or the numbers last notified to the Distributor under Clause 3.1;

then the Customer shall promptly notify the Distributor of the number of new Housing Units or Users.

#### 4. FEES

4.1 The Customer shall pay to the Distributor the Fees plus VAT as they fall due in accordance with this Contract.

4.2 The amount of any Annual Fee shall be:

- (a) on the Effective Date, the amount stated in the Order; and
- (b) at each Renewal Date, the amount notified by the Distributor to the Customer in the Renewal Notice.

4.3 The amount of any Consultancy Fees and Hosting Fees shall be set out in the Order.

4.4 The Distributor shall be entitled to raise invoices:

- (a) monthly in advance for all Consultancy Fees and Hosting Fees in respect of Consultancy Services and Hosting Services to be supplied by the Distributor during that month;
- (b) on the Effective Date and then annually 35 (thirty five) days in advance of the Renewal Date in respect of the Annual Fee; and
- (c) in respect of Variation Fees at the point in time at which the Variation Fee is chargeable under Clause 5 [*Variation of Fees*].

4.5 The Customer shall pay each of the Distributor's undisputed invoices within 30 (thirty) days after the invoice date. If the Customer fails to pay any undisputed amount payable by it under this Contract:

- (a) the Distributor shall be under no obligation to provide any or all of the Products while the invoice(s) concerned remain unpaid; and
- (b) the Distributor may charge the Customer interest on the overdue amount, payable by the Customer on demand, from the due date up to the date of actual payment, after as well as before judgment, at the rate



of 4% (four percent) each year above the base rate for the time being of Barclays Bank Plc.

- 4.6 Whenever the Customer is aware that an amount is due under this Contract, it shall, within 5 (five) days, email the Distributor a purchase order or purchase order number so that the Distributor may include reference to the purchase order number on its invoice. The first purchase order number for the Fees is set out in the Order.
- 4.7 If the Distributor sub-contracts the provision of any Products or Services, it warrants to the Customer that it shall pay its sub-contractor(s) within 30 (thirty) days of any valid and undisputed invoice being presented by the sub-contractor(s) for the purposes of Sections 68, 72 and 73 of the PA 23.

## 5. VARIATION OF FEES

- 5.1 The Distributor may charge a Variation Fee if:
- (a) the Customer notifies that there has been an increase in number of Housing Units or Users under Clause 3.2. Unless agreed otherwise, the Variation Fee amount shall be a pro-rata increase taking into account the current rates charged and the proportion of the year which has elapsed from the Effective Date if no Renewal Date has yet occurred, or the Renewal Date.
  - (b) the Customer changes its instructions in relation to the Processing of Personal Data which requires the Distributor to incur additional costs.
  - (c) the Distributor performs any additional Consultancy Services at the Customer's request which are not part of the Consultancy Scope, the Distributor shall be paid on a time and materials basis at the rates which have been agreed or if no such agreement has been reached, fair and reasonable rates.
- 5.2 The Fees may be increased by the Distributor as follows:
- (a) in the Renewal Notice for any Annual Fee;
  - (b) for any other Fee, by notice to the Customer which can be given before each anniversary of the Effective Date;
- and in each case the increase shall either:
- (c) be by no more than the greater of 3 (three) percent or the percentage increase in the CPI between 14 (fourteen) and 2 (two) months before the month in which the Renewal Notice (in the case of Annual Fees) or the Distributor's notice (in respect of other Fees) is served; or
  - (d) by such other amounts which exceed the increases stated in Clause 5.2(c), but subject always to the Customer's right of termination set out at Clause 9.3(c).

## 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 nor does the Distributor warrant that the Customer's use of the Products will be uninterrupted or error free.



- 6.2 The Distributor shall use reasonable skill and care in the provision of the Products including meeting any time scales or other performance objectives set for the delivery of the Products or performance 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 a Contract or any collateral contract, whether by statute, common law or otherwise, are excluded to the fullest extent permitted by law, including any implied conditions, warranties or other terms as to quality or fitness for purpose.
- 6.4 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.
- 6.5 To the fullest extent permitted by law, the total liability of the Distributor, whether in contract, tort or otherwise and whether under or in connection with this Contract shall not exceed the greater of:
- (a) in respect of Products with Annual Fees, an amount equivalent to 150% (one hundred and fifty percent) of the Annual Fee for the Product which is alleged to have caused the loss in the year in which the incident occurred which gave rise to the claim(s); or
  - (b) in respect of Products with a Consultancy Fee, an amount equivalent to 150% (one hundred and fifty percent) of the Consultancy Fee which is stated in the Order.
- 6.6 The Customer acknowledges and agrees that no representations were made prior to entering into this Contract and that, in entering into this Contract, it did not rely on any representations (whether written or oral) of any kind other than those expressly set out in this Contract including any Special Provisions. The Distributor shall have no liability otherwise than pursuant to the express terms of this Contract.

## 7. INDEMNITY

The Customer agrees to indemnify and hold the Distributor harmless against all and any claims, damages, losses, costs and expenses, including legal fees, arising out of the breach of 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, consultants and anyone else to whom the Customer makes available the Product or Services (whether permitted by this Contract or not).

## 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 for the Licence Period only in accordance with the terms of this Contract.

- 8.2 Subject to Clause 8.3, the Distributor shall 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 Contract infringes the Intellectual Property Rights of a third party (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 shall:
- (a) give written notice of the Claim to the Distributor;
  - (b) make no settlement or compromise of the Claim without prior written agreement of the Distributor;
  - (c) allow the Distributor to assume the control and conduct of the defence and settlement of the Claim; and
  - (d) 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 shall:
- (a) keep the Customer informed of relevant matters; and
  - (b) make no settlement or compromise of the Claim without prior notice to the Customer.
- 8.5 The Distributor may at its own option and expense:
- (a) procure for the Customer the right to continue using the relevant Product(s) in the manner contemplated by this Contract; or
  - (b) 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
  - (c) in the event that neither of the options (a) and (b) above is available, terminate this Contract and refund to the Customer any Annual Fee pro-rata to the period from the date of termination to the next Renewal Date.
- 8.6 The indemnity contained in Clause 8.2 will not extend to any Claim which arises as a result of:
- (a) 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
  - (b) use of the Products for a purpose not specified in this Contract or otherwise contemplated by this Contract.



## 9. TERMINATION

- 9.1 The Distributor may terminate this Contract immediately by notice in writing to the Customer if:
- (a) the Customer's use of any Products or Services is in breach of any applicable law or regulation; or
  - (b) the Customer is in material breach of any of its obligations under this Contract and, where that breach is capable of remedy, the Customer fails to remedy the breach within 30 (thirty) days of receiving notice specifying the breach.
- 9.2 Either party may terminate this Contract immediately by notice in writing to the other party:
- (a) if any of the following events (or any event analogous to any of the following occurs) occurs in respect of the other party:
    - (a) a proposal is made for a voluntary arrangement within Part I of the 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 (fourteen) 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 the 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
  - (b) in the circumstances set out in Clause 11.3;.
  - (c) where any of the circumstances in section 78 of the PA 23 apply, namely:



- (a) the Customer considers that the Contract was awarded or modified in material breach of the PA 23 or the regulations made under it;
  - (b) the Distributor has, since the award of the Contract, become an excluded or excludable contractor; or
  - (c) subject to conditions, a subcontractor to which the Distributor is subcontracting the performance of all or part of the Services under this Contract is an excluded or excludable contractor; or
- (d) where the Customer is exercising its right to terminate the Contract under clause 9.2(c), the Customer shall:
- (a) notify the Distributor of its intention to terminate;
  - (b) specify which termination grounds apply and why the Customer has decided to terminate the Contract;
  - (c) give the Distributor reasonable opportunity to make representations about whether the termination ground applies and the Customer's authority to decide to terminate; and
  - (d) specifically, where the termination ground relied on in clause 9.2(c)(c), give the Distributor reasonable opportunity to cease subcontracting to the excluded or excludable supplier and if necessary, find an alternative supplier to which to subcontract.

9.3 The Customer may terminate all or part of the Products and Services:

- (a) which have an Annual Fee on the Renewal Date at the end of the Initial Fixed Term or any subsequent Renewal Date provided it has given at least 90 (ninety) days' written notice to the Distributor expiring prior to the relevant Renewal Date.
- (b) which do not have an Annual Fee, the Customer may terminate all or part of the Products and Services on not less than 90 (ninety) days' written notice to the Distributor.
- (c) on 60 (sixty) days' written notice to the Distributor where the Distributor has proposed an increase in Fees under Clause 5.2(d) provided such right is exercised within 20 (twenty) days of receiving the Renewal Notice or Distributor's Notice under Clause 5.2(a) or 5.2(b).

9.4 At any time, the Distributor may terminate all or part of the Products and Services at any time on giving not less than 90 (ninety) days' written notice to the Customer.

## 10. Consequences of Termination

10.1 Termination of this Contract shall be without prejudice to any other contracts ongoing between the Parties at the time of termination, and such other contracts shall continue in full force and effect.



- 10.2 Termination of the Contract for any reason shall not affect any rights or obligations of either Party which have accrued prior to such termination.
- 10.3 Termination shall not relieve the Customer from its obligation to pay all outstanding Fees under the Contract.
- 10.4 Upon termination of all or part of the Products and Services, the Customer shall (and shall ensure that all third parties associated with or in contract with the Customer or any of its consultants, Contractors, service providers and sub-contractors) within 10 (ten) days of such termination delete any electronic copies of, and cease to use, the Product or Service which has been terminated and any documentation provided by the Distributor (including any direct or indirect derivations of it) and destroy any physical copies of them including those held by agents of the third parties, except to the extent that the Customer is required to preserve such documentation to fulfil a statutory obligation.
- 10.5 The Customer shall indemnify the Distributor against any loss or damage the Distributor incurs in respect of any continuing use by the Customer (or any of its consultants, Contractors, service providers and sub-contractors) of any terminated Product and Service and any documentation provided by the Distributor (including any direct or indirect derivatives of it).
- 10.6 Where required to do so under the PA 23, the Customer shall publish a contract termination notice on the central digital platform with 30 days of the Contract being terminated or having otherwise come to an end.

## 11. FORCE MAJEURE

- 11.1 Subject to the remaining provisions of this Clause 11, either party shall be released from its obligations (other than an obligation to pay money) under this Contract to the extent that that party is delayed, hindered or prevented from performing those obligations by an event of force majeure which was beyond that party's reasonable control.
- 11.2 The party claiming to be affected by an event of force majeure shall be entitled to invoke the provisions of Clause 11.1 provided:
  - (a) on becoming aware of any such event of force majeure, 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 by such event and its reasonable estimate of the period for which such failure or delay will continue; and
  - (b) it provides written confirmation and reasonable evidence of such event of force majeure within 10 Business Days of a request to do so; and
  - (c) it takes all reasonable steps to overcome and mitigate the effects of such event of force majeure.
- 11.3 If a party is prevented from performing its obligations under this Contract by an event of force majeure which continues for more than 90 (ninety) days, then either party shall be entitled to terminate this Contract immediately on giving written notice of termination to the other party in accordance with Clause 9.2(b).

## 12. CONFIDENTIALITY AND PUBLICITY



- 12.1 Each Party agrees and undertakes that during the term of this Contract and for a period of 6 years after termination of this Contract, 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:
- (a) 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 Contract or subsequently comes lawfully into the possession of such party from a third party; or
  - (b) the Distributor uses aggregated data which cannot be traced back to any particular customer in order to assist the housing sector in general or to inform its future service offer;
  - (c) such party is under a legal or regulatory obligation to disclose such information.
- 12.2 The Terms of this Contract are confidential and may not be disclosed by the Customer without the prior written consent of the Distributor.
- 12.3 The Distributor may, unless the Customer informs it otherwise in writing, reference that it works with the Customer including by using the Customer's logo or title on its Website or in other appropriate circumstances. The Distributor shall not, unless specifically authorised to do so, reference the charges paid by the Customer.
- 12.4 The Distributor acknowledges that the Customer may need to publish a copy of this Contract and various notices in respect of this Contract to comply with its obligations under the PA 23. This includes but is not limited to obligations in respect of:
- (a) publication of contracts under Section 53 of the PA 23;
  - (b) contract performance under Section 71 of the PA 23;
  - (c) modification of the Contract under Section 75 of the PA 23; and
  - (d) termination of the Contract under Section 80 of the PA 23.
- 12.5 The Distributor shall comply promptly with any reasonable requests from the Customer for information required for the publication of this Contract or the completion of any notices the Customer is required to publish in connection with this Contract.
- 12.6 If the Distributor considers that any information contained in this Contract is Sensitive Commercial Information and there is an overriding public interest in that information being withheld from publication, then the Distributor shall notify the Customer of the reasons why it considers this to be case within 30 (thirty) days of the date of this Contract.
- 12.7 The provisions of this Clause 12 shall remain in full force and effect despite termination of this Contract.

### 13. DATA PROTECTION



- 13.1 The parties agree and acknowledge that the following information which shall be set out in Schedule 3 in relation to Personal Data:
- (a) duration of Processing;
  - (b) nature and purpose of the Processing;
  - (c) type of Personal Data; and
  - (d) categories of Data Subject.
- 13.2 In the course of providing Distributor Hosted Software, the Distributor shall:
- (a) process the Personal Data only on the documented instructions of the Customer, as set out in Schedule 3 as varied by any Order, and ensure it takes steps to ensure that its employees and those of any Sub-Processor only Process Personal Data on those documented instructions, unless required to do otherwise by applicable law;
  - (b) warrant that the security measures taken by as a processor are the obligations of the Processor in Article 32 of the UK GDPR in Order to ensure the appropriate level of security for the Data;
  - (c) taking into account the nature of the Processing, assist the Client with its obligations to comply with Data Subjects' requests and Data Subjects' rights under Chapter III of the UK GDPR;
  - (d) provide all information necessary to demonstrate the Distributor's and any Sub-Processor's compliance with this clause;
  - (e) not Process or transfer Personal Data outside of the European Economic Area; and
  - (f) delete all Personal Data following the end of the Term unless the Distributor is required by Law to retain it.
- 13.3 The Customer may revise its instructions to the Distributor about the Processing of Personal Data at any time if this is necessary or desirable to comply with Data Protection Law. Such revision shall entitle the Distributor to raise a Variation Fee to the extent it requires the Distributor to incur additional costs. The Data Controller shall use reasonable endeavours to give the Data Processor as much notice of the revision as possible.
- 13.4 The Distributor shall notify the Customer of any Sub-Processor and give the Client a reasonable opportunity to object to such Sub-Processor. Such objection may only be on the grounds that the Customer reasonably believes that the Sub-Processor is not capable of carrying out its obligations in compliance with Data Protection Law.
- 13.5 The Distributor shall put in place in writing with any Sub-Processor contractual obligations which are at least equivalent to the obligations imposed on the Distributor pursuant to this Clause 12.

#### 14. **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.

**15. SEVERABILITY**

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

**16. AMENDMENTS**

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

**17. THIRD PARTY RIGHTS**

No term of this Contract is intended to confer a benefit on, or to be enforceable by, any person who is not a party to it.

**18. NOTICES**

18.1 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 Contract. Notices may be sent by first-class mail or e-mail. Correctly:

- (a) addressed notices sent by first-class mail shall be deemed to have been received 72 (seventy two) hours after posting (and, in the case of the Distributor, a notice shall be correctly addressed if it is addressed to M3 Housing Ltd, Three Kings, 23 Commonside East, Mitcham, Surrey CR4 2QA);
- (b) 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;

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 after that.

**19. ASSIGNMENT AND SUB-CONTRACTING**

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

- (a) 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
- (b) allow the Products to become the subject of any charge, lien or encumbrance, without the prior written consent of the Distributor.



19.2 The Distributor may assign, charge, sub-contract or otherwise transfer any of its rights or obligations under this Contract.

20. **ENTIRE AGREEMENT**

The Contract contains the entire agreement between the Parties relating to the supply of Products and Services and supersede all prior agreements, arrangements and understandings between the Parties.

21. **GOVERNING LAW AND JURISDICTION**

This Contract 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.







M3NHF Schedule: Damp, Mould and Condensation Works	978-1-908409-33-1
M3NHF Schedule: Responsive Maintenance and Void Property Works - Labour and Material Analysis and Standard Minute Values	978-1-908409-35-5
M3NHF Schedule: Planned Maintenance and Property Reinvestment Works - Labour and Material Analysis and Standard Minute Values	978-1-908409-36-2
NHF Form of Contract 2011 (Gas and Heating)	978-1-908409-37-9
NHF Form of Contract 2011 (Planned Works)	978-1-908409-38-6
NHF Form of Contract 2011 (Mechanical and Electrical Services)	978-1-908409-39-3
NHF Form of Contract 2011 (Estate Services)	978-1-908409-40-9
M3NHF Schedule: Responsive Maintenance and Void Property Works PPP/PPV Documentation	978-1-908409-42-3
NHF Minor Form of Contract 2015	978-1-908409-43-0
M3NHF Schedule: Repairs, Improvements, Maintenance and Voids Ordering Schedule (RIMVOS) UK	978-1-908409-44-7
M3NHF Schedule: Repairs, Improvements, Maintenance and Voids Ordering Schedule (RIMVOS) Eire	978-1-908409-45-4
NHF Form of Contract 2011 (Ireland)	978-1-908409-46-1
NHF Form of Contract 2011 (Gas and Heating) (Ireland)	978-1-908409-47-8
NHF Form of Contract 2011 (Scotland)	978-1-908409-48-5
NHF Form of Contract 2023	978-1-908409-49-2
M3NHF Schedule: Electrical Upgrading and Maintenance	978-1-908409-50-8
M3NHF Schedules: Model Contract Notices and Certificates	978-1-908409-52-2
M3NHF Schedule: Heating Services	978-1-908409-53-9
M3NHF Schedule: Security, Access and Life Support Systems	978-1-908409-54-6
NHF Form of Contract 2023 (Northern Ireland)	978-1-908409-56-0
NHF Form of Contract 2023 (Scotland)	978-1-908409-57-7
NHF Form of Contract 2025	978-1-908409-58-4
M3 Schedule of Rates Form of Contract 2023 (Ireland)	978-1-908409-59-1
M3NHF Schedule: Heating Services (Ireland)	978-1-908409-60-7
M3NHF Schedule: Planned Maintenance and Property Reinvestment Works (Ireland)	978-1-908409-61-4
M3NHF Schedule: Responsive Maintenance and Void Property Works (Ireland)	978-1-908409-81-2
M3NHF Schedule: Gas Appliance Servicing and Maintenance (Ireland)	978-1-908409-85-0
RIMVOS (Orchard Files)	
RIMVOS (SMV)	
SOR Model Partnering	
SOR NEC Contract	
SOR Orchard Files (Modules)	
SOR Orchard Files (NHF SOR)	
SOR SMV Modules (Type A)	
SOR SMV Modules (Type B & C)	
A5 ROS Medium Descriptions Book	
One Suite	



## **Grant**

1. 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 Product for the duration of the Licence Period only in accordance with the terms of the Contract and this Schedule.

## **Use**

2. The Product shall only be used by the Customer for the purpose of operation of a repairs, periodic inspection, servicing, maintenance, property reinvestment and improvement contract as determined by the Product documentation.
3. The Customer shall not use any part or all of the Product or any associated documentation for the provision of services to other organisations (except as provided under Paragraph 9 of this Schedule) or for any purpose not covered by Paragraph 2 of this Schedule, except where prior written permission has been obtained from the Distributor.

## **Distributor's obligations**

4. The Distributor will supply the Product to the Customer in Electronic Format.

## **Customer's obligations**

5. The Customer may make sufficient copies of the Product in Hard Copy and PDF protected format to enable documents to be prepared for tender and operational purposes provided that:
  - 5.1 the Product name shall appear on all covers and the headers or footers to each page as in the original Hard Copy or Electronic Format, whenever the document is reproduced or amended;
  - 5.2 no part of the Product shall be extracted or copied from the Hard Copy or Electronic Form without being accompanied by the Product name; and
  - 5.3 the Customer shall procure that in any tendering process or contract using the Product, it shall require the Contractor to treat all data derived from the Product as confidential and to use it only for the purposes as set out in this Schedule.
6. The Customer is permitted to make changes to the Product to suit its requirements, but must then declare all changes to the standard schedule and standard prices to each Contractor when tendering, so that the Contractors are fully aware of the extent to which it differs from the standard Product.
7. The Customer may pass Hard Copies of the Product to potential Contractors exclusively for use for tender purposes on condition that the potential Contractors return or destroy all copies when the tender process is completed.
8. The Customer shall not pass unprotected copies of the Product in Electronic Format to potential Contractors for tender purposes without the written permission of the Distributor, and may purchase a Service from the Distributor



to assist them in making the Data available to potential Contractors in Electronic Format.

9. The Customer shall not pass copies of the Product to Contractors or any other appointed third party except where:
  - 9.1 it has have appointed the Contractor or other appointed third party to carry out works or provide services within the terms of this schedule;
  - 9.2 it ensures that the Product is used exclusively for work carried out for the Customer within the terms of this schedule; and
  - 9.3 it ensures the Contractor (and its sub-contractors, staff and operative) or other appointed third party returns, destroys or deletes all copies of the Product and removes it from all computers at the earlier of when this work ceases or at the end of the Licence Period or the supply of the Product and/or Service is terminated under Clause 9 of the Terms.
10. The Customer shall ensure that the Product is held secure and that security measures are in place to prevent unauthorised copying or use of the Product in Electronic Form and shall assist the Distributor or their agents in identifying the source of any unauthorised copies.
11. The Customer shall be responsible for the provision of all hardware and software and the provision of any data transfer programs that may be required.
12. The Customer shall designate a single point of contact with regard to any queries that may arise over the Data provided.
13. At any time, the Distributor may require the Customer to notify it within 3 (three) Business Days of any request to do so, of the identities of the Contractors and other third parties to whom it has provided copies in Electronic Format or Hard Copy of the Product.

### **Changes**

14. The Distributor reserves the right to make changes to the Product when it considers it reasonable to do so.

### **Support Services**

15. Subject to, and in consideration of, the payment of the Annual Fee the Distributor shall, during the Licence Period, provide the following support services:
  - 15.1 facilities via the Website to respond to queries specifically relating to Products from the Customer, within 4 (four) Business Days;
  - 15.2 making available from time to time to the Customer, as determined by the Distributor, updates to the Product.

### **End of Licence Period**

16. Within 10 (ten) days of the end of the Licence Period, the Customer shall delete any electronic copies of, and cease to use, the Product and any documentation provided by the Distributor (including any direct or indirect derivations of it) and destroy any physical copies of them including those held



by agents of the third parties, except to the extent that the Customer is required to preserve such documentation to fulfil a statutory obligation.



## SCHEDULE 2 –SOFTWARE PRODUCTS

### Diagnostics and reporting products

M3Central Diagnostics	4250
M3Central Diagnostics and Reporting	4252
M3Central FM	4280
M3Central Reporting	4251
M3 eSurveys	
M3Housecall	4300
M3Housecare	4110
M3Locator Plus	4200
M3Locator Plus Contractor Licence	4202
M3Surveyor	4253
M3NHFSorRsCodeSearch	
M3Vision	

### Development related

M3FlexIT	
M3Pamwin Lite	4620
M3Pamwin Plus	4610
M3RD20	4620

### Grant

1. Subject to and in consideration of the payment of the Initial Fee and Annual Fee, the Distributor grants the Customer a non-exclusive, non-transferable licence for the Customer or the Customer's Full Users and Read Only Users (as specified in the Order) to use the Software during the Licence Period only, which may be accessed in accordance with this Schedule and the Contract.

### Use

2. For the purposes of Paragraph 1, use of the Software shall be restricted to using the object code for the purposes of enabling the Customer to maintain, repair, develop or value housing and other assets in the legitimate course of the Customer's business.
3. The Software may be stored and accessed in the manner set out in the matrix at Schedule 4.
4. The Customer shall not (and shall not permit any third party to) copy, adapt, reverse engineer, decompile, disassemble, modify or make error corrections to the Software.
5. The Software may not be used by the Customer to provide services to any third parties or to be resold as part of the Customer's products, save:



- 5.1 for Software where the Customer is making bids on behalf of third parties for funding to Homes England; or
- 5.2 where stated in the Order; or
- 5.3 where the Customer has obtained the prior written permission of the Distributor.

### **Users of Software**

6. In relation to the Development Software, the Customer shall ensure that only Users have access to the Software and shall ensure that the Software usernames and passwords are kept safe and confidential.
7. Where Software is charged for on a per User basis, the Customer shall ensure that:
  - 7.1 Full Users are named people who have been notified to the Distributor who are permitted to access and use the Software by entering and changing data within the Software. Such Full Users may access the Software from more than one computer provided they do not do so concurrently;
  - 7.2 whenever the name of the Full User is changed, notify the Distributor by email within 2 (two) Business Days;
  - 7.3 the number of Full Users and Read Only Users does not at any time exceed the numbers for which licenses have been granted; and
  - 7.4 Read Only users are only permitted to read or review reports or other information generated by Software but may not enter or alter data in respect of any Software.
8. Upon receiving a written request from the Distributor, the Customer shall provide the Distributor with an up-to-date list of all Full Users and Read Only of the Software.
9. Where the Software is charged for depending on the number of Housing Units, the Customer shall ensure that the Software may be used and accessed only by:
  - 9.1 employees of the Customer; or
  - 9.2 Contractors and other third parties providing services to the Customer.
10. The Customer shall have sole responsibility for:
  - 10.1 setting and managing the User's access privileges to the Software using its functionality;
  - 10.2 setting and providing the Users with passwords to access the Software; and
  - 10.3 for managing the use of the passwords.



11. The Customer is only permitted to access any Distributor Hosted Software if the Customer has been authorised to do so, and has been provided with the log-in details, by the Distributor or an authorised officer of the Customer.
12. The Customer shall not disclose the log-in details to any third party unless expressly authorised to do so by the, nor shall the Customer attempt to gain unauthorised access to any Distributor Hosted Software including by attempting to circumvent any authentication system.

#### **Additional Client Licences for Software**

13. The Customer shall inform the Distributor in the event that the Customer wishes to use the Software to provide services to third parties (including to clients), and shall provide such information as the Distributor requests in relation to that intended use.
14. The Distributor shall notify the Customer whether such use is permitted and, if so, whether any additional fee shall be payable for such use. Unless the Customer withdraws its intention to proceed, the Distributor may grant the Customer the appropriate additional client licence specifying the additional permitted use of the Software, and the Customer shall become liable to pay the relevant annual fee (pro-rated to represent the remaining period until the next Renewal Date) immediately and, thereafter, as part of the Annual Fee in accordance with the Agreement. The Customer shall provide such information to the Distributor regarding the Customer's use of the Software as the Distributor may from time to time reasonably require (including information regarding the numbers of third parties to whom the Customer is providing Services using the Software), in accordance with Clause 3 of the Contract. All other terms of this Schedule and the Contract shall continue to apply.

#### **Customer's obligations**

15. The Customer shall take all reasonable precautions so as not to interfere or attempt to interfere with the proper and uninterrupted operation of the Distributor Hosted Software, including by the introduction of viruses, worms, Trojan horses and denial of service attacks or similar.
16. Where the Customer is permitted to post material on the Website or to any part of any Distributor Hosted Software, the Customer may only do so for a purpose connected to the proper use of the Software.
17. The Customer indemnifies the Distributor for any claims arising out of the use of the Software by the Customer or Users which results in the transmission or display of any material which is offensive, defamatory, illegal or which infringes intellectual property rights of any third party.
18. The Customer acknowledges that it is solely responsible for its use of the Software, and any content which is uploaded to the Distributor Hosted Software.

#### **Hosting and Service Levels**

19. The Distributor accepts no responsibility for any third party communication data which is lost or corrupted due to user error, transmission failure or for any other reason.
20. Access to and downloading of any data from the any web based services is at the risk of the Customer and the Customer shall take all reasonable



precautions to check for viruses etc. The Distributor makes no warranty that the Distributor Hosted Software material accessed via it is free from viruses or anything else that has contaminating or destructive properties including where such viruses or other programmes result in loss of or corruption to the Customer's data or other property.

21. Any Customer Hosted 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 this Schedule or in the Order or otherwise with the written consent of the Distributor.
22. The Distributor shall have no responsibility or liability for failure to provide the Distributor Hosted Software due to circumstances beyond its control. These may include problems with the internet, the Customer's mail servers or links or other setup problems on the Customer's side.
23. The Distributor shall use reasonable endeavours to make any Distributor Hosted Software available at all times save where:
  - 23.1 circumstances occur to cause downtime which are beyond the Distributor's control, including any failure by the Distributor's third party hosting services; or
  - 23.2 the Distributor arranges downtime by agreement with the Customer for patching or updating work outside core hours of Monday to Friday from 8am to 8pm.
24. The Distributor shall use reasonable endeavours to enforce the terms of its Third Party Hosting Agreement to:
  - 24.1 require the third party to make the service available in accordance with the terms of the Third Party Hosting Agreement;
  - 24.2 report any outage and to escalate any unavailable service to the highest levels as rapidly as possible so that any outage is restored as soon as possible;
  - 24.3 provide reporting about the nature of any outage and an analysis of the causes of the outage.
25. If the outage levels exceed those permitted by the Third Party Hosting Agreement on more than 2 (two) occasions in any three month period, the Distributor shall consult the Customer and other customers about making changes to the hosting solution and, in particular, terminating the Third Party Hosting Agreement and changing the hosting supplier.
26. The Distributor reserves the right to make changes to the Distributor Hosted Software when it considers it reasonable to do so. Any such changes shall be notified to the Customer in writing at least 14 (fourteen) Business Days before being implemented.

### **Support Services**

27. 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 the following support services to the Customer:



- 27.1 facilities via the Distributor's website to respond to queries, with an acknowledgment within 1 (one) Business Day and a substantive response within 2 (two) Business Days.
- 27.2 to respond to Software Defect reports within 2 (two) Business Days, such response to include one or more of the following, at the Distributor's sole discretion:
- (a) confirmation that the Software Defect is already known and can be fixed in an available patch (which can be installed by Distributor or the Customer according to the matrix at Schedule 4);
  - (b) a workaround to enable the Customer to continue using the feature for which a Software Defect has been reported, or
  - (c) a timetable for resolution, including the release of a patch for the Software Defect; and
- 27.3 making available updates to the Software to remedy Software Defects or to enhance existing features or to add new features as indicated in the matrix at Schedule 4.

#### **Fees**

28. The Distributor may charge an Initial Fee and an Annual Fee for the licence to use the Software and receipt of the Support Services. The Initial Fee for this Software shall cover the set-up charges incurred in configuring the Software to the Customer's reasonable requirements.
29. The Initial Fee and Annual Fee shall remain confidential between Customers and the Distributor and will not be published.

#### **End of Licence Period**

Within 10 (ten) days of the end of the Licence Period, the Customer shall delete any electronic copies of, and cease to use, the Product and any documentation provided by the Distributor (including any direct or indirect derivations of it) and destroy any physical copies of them including those held by agents of the third parties, except to the extent that the Customer is required to preserve such documentation to fulfil a statutory obliga



### SCHEDULE 3 – INSTRUCTIONS FOR PERSONAL DATA

	<b>Personal Data of which the Customer is Data Controller</b>
<b>Data Processor:</b>	Distributor.
<b>Categories of Data Subject:</b>	Any customers of the Customer.
<b>Subject matter of Processing (including types of Personal Data that may be Processed):</b>	Personal Data including names, addresses and contact details, Property access requirements and special requirements or vulnerabilities.
<b>Nature and purpose of Processing:</b>	Storage, retrieval, organising or structuring of the Personal Data whilst providing Software hosting services.
<b>Duration of Processing:</b>	During the Term and for 40 (forty) days after its end (within which it is to be returned or destroyed).



## SCHEDULE 4 - MATRIX

	1	2	3	4		5	6	7				
	Physical hardware	Paying for OS	Installing OS	Web application stack	Applying security patches	Firewall and access	Permissions	MS Office	Upgrading M3 software			
<b>On Premises</b>	Customer	Customer	Customer	Customer	Customer	Customer	Customer	Customer	Customer			
<b>Off Premises - Customer outsource</b>	Customer	Customer	Customer	Customer	Customer	Customer	Customer	Customer	Customer			
<b>Off Premises - Managed service</b>	Service provider	Distributor	Service provider	Distributor	Service provider	Service provider	Distributor	Distributor	Distributor			
<b>Off Premises - Cloud solution</b>	Cloud provider	Distributor	Cloud provider	Distributor	Distributor	Distributor	Distributor	Distributor	Distributor			
<b>Notes</b>												
1	The Distributor's current managed service provider is Iomart PLC, and current cloud solution provider is Microsoft. A change in providers will not affect responsibilities set out in this Schedule.											
2	Where a server is dedicated to one Customer any costs incurred by the Distributor for the Operating System will be passed on to the Customer as part of their agreed combined licence and hosting charge, unless the Customer provides licence keys											
3	The Distributor is a Microsoft Silver Partner and will always provide the latest OS available when building a server. The Distributor will keep on that OS as long as it is supported.											
4	Some Products require installation of additional application layers or runtime environments, and subsequent patching and upgrading.											
5	Some Products installed off premises can link to a client domain controller. In such circumstances the Distributor is responsible for the connection to the domain controller, but not responsible for managing the client domain											
6	Some Products require MS Office. Any costs incurred by the Distributor for MS Office will be passed on to the Customer as part of their agreed combined licence and hosting charge, unless the Customer provides licence keys.											
7	Where a server is dedicated to one Customer, we will not automatically upgrade M3 software, but will do so upon Customer request											



## 2 – THIRD PARTY HOSTING AGREEMENT

**Microsoft Azure**

<https://azure.microsoft.com/en-gb/support/legal/>

**IOMART**

See next page



## 1. Your Agreement with iomart

1.1 These Terms and Conditions should be read in conjunction with a completed Sales Order Form, in which you will find the Service, pricing and other arrangements specific to your contract with iomart. Signature of a Sales Order Form on behalf of both you and iomart creates a legally binding contract made up of that Sales Order Form, these Terms and Conditions and any schedules or appendices referred to in either document. For ease, that contract is referred to in these Terms and Conditions as the "Agreement".

## 2. Terminology

2.1 To make these Terms and Conditions easier to read, we have given the following expressions a specific meaning, when used in this Agreement:

**AUP** means iomart's standard acceptable use policy, a copy of which is provided with the Sales Order Form and the terms of which may be updated by iomart from time to time on written notice to you;

**Agreement** has the meaning given to that term in paragraph 1.1;

**Charges** means the charges that you will pay to iomart pursuant to paragraph 5, as detailed in the Sales Order Form and updated from time to time;

**Data Centre** means a data centre operated by iomart or a member of its group of companies;

**DPA Regulations** means the Data Protection Act 1998, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and the EU Data Protection Directive 95/46/EC together with all the relevant mandatory guidelines issued by the UK Information Commissioner (as updated or amended from time to time);

**Effective Date** means the date of these Terms and Conditions as set out on the Sales Order Form;

**Energy Charges** means any taxes levies costs and expenses whether direct or indirect arising out of or attributable to any requirement on iomart or any of its suppliers or customers to comply with any Energy Law or otherwise in connection with energy use or consumption or emissions of greenhouse gases;

**Energy Law** means any applicable Law (including but not limited to the EU Emissions Trading System, the UK Climate Change Levy, the Energy Act 2011 and Climate Change Act 2008) which make provision for energy charges or levies or which imposes or increases any taxes, charges or levies of any nature in respect of use of power or energy consumption (whether directly or indirectly);

**Initial Term** means the initial term of this Agreement, as set out in the Sales Order Form; iomart means iomart Hosting Limited, (Co. No. SC275629), whose registered office is at Lister Pavilion, Kelvin Campus, West of Scotland Science Park, Glasgow, G20 0SP;

**Law** means any applicable law whether local, national or international including statute, statutory instrument, EU regulation having direct

legal effect, and guidelines and codes which have legal effect;

**Network** means your connection to the internet as provided by iomart or an iomart third party supplier;

**Recurring Service Charge** means those charges identified as recurring charges as set out in the Sales Order Form;

**Sales Order Form** means a document bearing that heading which has been duly signed on behalf of both you and iomart, containing service, pricing and other arrangements specific to your contract with iomart;

**Service** means the services set out in the Sales Order Form;

**SLA** means the service level agreement attached as Schedule 1 to these Terms and Conditions, in accordance with which iomart will provide the Services; **Start Date** means the earlier of:

- i) two (2) months following the Effective Date; or
- ii) acceptance of the Services in accordance with paragraph 6; or
- iii) live use of the Services by you;

**Terms and Conditions** means these Master Services Agreement Terms and Conditions;

**Third Party Services** means services provided to you by any supplier other than iomart or an iomart agent;

**Variable Service Charge** means those variable charges as set out in the Service Order Form;

you and your means iomart's customer, being the person or entity that is identified in the Sales Order Form; and

2.2 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

## 3. The Services that iomart will provide

3.1 iomart will provide the Services to

you in accordance with this Agreement:

3.1.1. to a standard that meets or exceeds the SLA; and

3.1.2. using reasonable care and skill.

## 4. Our Commitments to one another

**4.1 Authority to sign the Agreement.** Each of us confirms to the other that we have the authority to enter into and meet our respective obligations under this Agreement. iomart will not be bound by any Sales Order Form until it is accepted and signed by iomart and notified to you in writing.

**4.2 Relevant licences.** iomart confirms that it owns or is licensed to use the systems, products, and materials necessary to provide the Services to you.



**4.3 Compliance with acceptable use policy.**

You will comply with the AUP during the term of the Agreement.

**4.4 Third Party Services.** You are responsible for ordering:

4.4.1. all lines or circuits you require from third party carriers to receive the Services; and

4.4.2. any necessary cross-connects from iomart and paying iomart's cross-connect charges.

You will ensure that third party carriers install those circuits in your name. You will be solely responsible for those circuits and for all payments due to the carriers. You will notify the carrier directly when you wish to end or change those circuits.

**4.5 Resale of the Services.** You may use Services for your own benefit or for the purposes of using the Services to provide your business services to third parties but may not resell or sublet the Services to any third party.

**4.6 Insurance.** It is your responsibility to obtain insurance including professional indemnity insurance, as may be required by you for provision of the Services by iomart. If iomart asks you to do so, you must provide iomart with the relevant certificates of insurance. iomart will take out and maintain professional indemnity, public liability and building insurance and will provide you with the relevant certificates of insurance on written request by you.

**5. Charges and their payment**

**5.1 Service Start Date.** iomart shall start invoicing you for the Services with effect from the Start Date.

**5.2 Implementation/Setup Charges.** When you sign this Agreement, iomart will invoice you for any set up or implementation fee listed in the Sales Order Form, together with any costs incurred through the purchase of any equipment that you have agreed to pay for in accordance with and as set out in the Sales Order Form. That invoice will be payable within 14 days of the date on which it is issued to you.

**5.3 Recurring Service Charge.** When you sign this Agreement, iomart will also invoice you for the Recurring Service Charge listed in the Sales Order Form. That invoice will similarly be payable within 14 days of the date on which it is issued to you. Following iomart's initial invoice, iomart will invoice you for each further instalment of the Recurring Service Charge monthly in advance, each further invoice being payable within 30 days of the date on which it is issued to you.

**5.4 Variable Service Charges.** iomart will invoice you monthly in arrears for any Variable Service Charges that become payable as a result of the Services that iomart provides. Those Variable Service Charges will be calculated in accordance with the rates set out in the Sales Order Form.

**5.5 Additional Services.** If iomart provides any other Services to you, the Charges payable will be agreed in advance between iomart and you, in writing.

**5.6 Third Party Services.** In line with paragraph 4.4, you are solely responsible for paying any charges for the lease or use of telecommunications lines or any other Third Party Services.

**5.7 Taxes.** The Charges do not include applicable taxes (including VAT) or import/export duties or shipping and delivery charges. If any of those duties or charges are incurred, they will be added to any relevant invoice and will be payable by you or, if payable on a withholding tax basis, will be payable by you to the relevant authority direct.

**5.8 Service Provider Software Licensing.** Where iomart provides software via a rental model using Service Provider Licensing Agreements, we reserve the right to pass on to you any price increase imposed by the relevant Software Provider where the software provided is solely used for the provision of the Services to you. Where any such increase does not apply solely to you, then iomart may make a reasonable apportionment of such charge to you. iomart will give you advance written notice of any such increase, together with any equivalent price increase notice received from the supplier concerned.

**5.9 Payment of invoices.** Unless you dispute an invoice with good cause, you must pay each iomart invoice in GBP(£) within 30 days of the date on which that invoice is issued or within such alternative period as is expressly stated in this Agreement (the "Due Date"). You will not be entitled to deduct or off-set any amount that iomart may owe to you against an iomart invoice.

**5.10 Suspension of Services for non-payment.** If you do not pay an invoice (which is not disputed in good faith):

5.10.1. within 7 days of the Due Date, iomart may terminate this Agreement and restrict your access to any equipment that you own which is located on iomart's premises;

5.10.2. within 14 days of the Due Date, iomart will be entitled, at any time thereafter (until payment is made), to disable the Service. If iomart does disable the Service and you wish to have it re-enabled, iomart will charge you a re-connection fee calculated in accordance with the Sales Order Form; and

5.10.3. within 30 days of the Due Date, iomart may terminate this Agreement and end the Service permanently and charge you a de-installation charge calculated in accordance with the Sales Order Form. If we end the Service in that way, you will still be responsible for your obligations under this Agreement, including the obligation to pay Charges.



We will contact you at least 3 times outlining details of your overdue invoices before taking any of the actions listed in this paragraph 5.10.

**5.11 Increase in Charges.** In addition to any annual change in the Charges imposed under paragraph 9.1, iomart may increase its Charges to reflect any change in the law or tax rules that affect operators of data centres, including any Energy Charges incurred by iomart in the provision of the Services. If a change of that kind is implemented, iomart will give you written notice of any resulting increase in the Charges (including any increase in Energy Charges) and the date on which it will become effective.

**5.12 Interest charge.** If you do not pay any invoice (which is not disputed in good faith) in full by the Due Date, iomart will be entitled to charge you interest on the unpaid undisputed amount calculated at a rate of 8% per annum above the prevailing base rate of the Bank of England,

that interest charge being applied until the outstanding undisputed amount is settled in full. iomart's right to charge interest does not affect its right to take other legal action against you in relation to non-payment of the amount concerned.

## 6. Acceptance

**6.1 Acceptance Criteria.** Where the Sales Order Form specifies that acceptance tests are applicable to the provision of Services, then no later than 10 days from the Effective Date, the parties will prepare and will use reasonable endeavours to agree proposed acceptance criteria for acceptance tests for the Services.

**6.2 Acceptance Tests.** Iomart shall carry out the agreed acceptance tests on the Services within 10 days of the Start Date (or as otherwise agreed between the parties). The acceptance tests shall be started as soon as reasonably possible following the Start Date. Iomart will give you at least 24 hours' notice of the start of the acceptance tests and you are permitted to observe all or any part of the testing.

**6.3 Acceptance Remedies.** If any part of the Services fails the agreed acceptance tests, iomart shall remedy the defects or deficiencies and will repeat the relevant tests within a reasonable time.

## 7. Third Party claims

**7.1 Indemnity.** If any claims or demands are brought against iomart or any iomart employee, officer, director or affiliate (each an "iomart Entity") arising out of (i) your breach or alleged breach of the AUP; or (ii) which allege: any damage or destruction to the Data Centre, the Network, iomart's premises or equipment; or (iii) which allege any damage or destruction to any of iomart's customer equipment or data; or (iv) which allege any personal injury to or property damage of any iomart Entity, and the claim, damage, destruction or injury is caused by you or results from a breach of this Agreement or something that you have negligently done or failed to do, you must indemnify iomart and the iomart Entities against

those claims or demands. This will not apply to the extent that the damage, destruction or injury is caused by the negligence or breach of this Agreement by iomart or any iomart Entity. The limit on liability set out in paragraph 8.4 shall not apply to this indemnity.

**7.2 Conditions of Indemnity.** For the indemnity set out in paragraph 7.1: (i), iomart will promptly notify you in writing of the existence of any claim or demand covered by the indemnity; (ii) iomart will use reasonable endeavours to minimise any loss or damage which it may suffer; (iii) on request by iomart, you will allow iomart to participate in or conduct all negotiations and proceedings in relation to the defence and settlement of the claim; and (iv) where iomart permits you conduct or defence of the claim, you must obtain iomart's prior written consent to the settlement of any claim (provided that iomart does not unreasonably refuse or delay giving its consent).

## 8. Limits of Liability

**8.1 Limit of exclusions.** Nothing in this Agreement excludes or limits iomart's or your liability where that liability arises out of the death or personal injury of any person caused by negligence or for any statement that is deemed to have been a fraudulent misrepresentation.

**8.2 Service credits.** Except where you have an express right to terminate the Agreement as set out in the SLA, the service credit regime set out in the SLA will be the sole and exclusive remedy by which you will be compensated for any failure (howsoever arising, whether in contract tort or otherwise) by us to meet the service levels set out in the SLA.

**8.3 Your obligations.** You will take all reasonable measures to prevent and mitigate damages under this Agreement and will be solely responsible for the safe preservation and storage of all software and material delivered or created in relation to the Services. You will also make back up copies of your files at reasonable intervals, in order to allow lost or disrupted data to be recovered with reasonable efforts only.

**8.4 Cap on liability.** Provided that paragraph 8.1 will always apply, and subject to paragraph 8.3, iomart's and your total liability to each other in relation to loss or damage arising out of or in connection with this Agreement, whether in contract, tort, (including negligence) or otherwise, in any contract year, (including any loss of data) will be limited to the greater of (a) the total Charges paid or payable by you to iomart in the Initial Term; or (b) the total Charges paid or payable by you to iomart in the contract year concerned.

**8.5 Liability to your clients.** iomart will not under any circumstances be liable to you under this Agreement for any claim by any of your clients arising out of your failure to provide any services which you have agreed to provide to such client (whether such failure arises as a result of your negligence, breach of this Agreement or otherwise).

**8.6 Exclusion of indirect losses.** Provided that paragraph 8.1 will always apply neither party shall in any circumstances whether in contract, tort



(including for negligence or statutory duty) misrepresentation, (whether innocent or negligent), restitution or otherwise be liable for any:

8.6.1. loss of profits;

8.6.2. loss of anticipated savings;

8.6.3. pure economic loss

8.6.4. loss of data;

8.6.5. loss of business opportunity and management time;

8.6.6. loss of goodwill

8.6.7. loss or damage that you incur as a result of third party claims or

8.6.8. indirect or consequential loss, costs, damages, charges or expenses, howsoever arising.

**8.7 Exclusion of implied warranties.** Subject to the warranties that iomart has given to you, under this Agreement all warranties terms and conditions that would otherwise be implied by statute or at common law are excluded to the fullest extent permitted by law. Without prejudice to the foregoing, iomart does not warrant, guarantee or undertake that any Service will be uninterrupted, error-free or capable of withstanding all cyber attacks or other unauthorised hacking or intrusions.

**8.8 Data.** In the event that your data is corrupted or lost or sufficiently degraded as to be unusable due to a breach by iomart of its obligations under this Agreement after its receipt or creation by iomart or during any processing of your data in accordance with the Services, you shall have the option, as your sole remedy, to require iomart, at iomart's own expense to restore or procure the restoration of Customer's data to the last available back-up point.

**8.9 Cyber risk.** iomart will perform the Services as set out in this Agreement, including, without limitation, by implementing appropriate security measures and firewalls where the same are part of the Service. iomart has no knowledge of the data or types of data iomart hosts under this Agreement. It is your responsibility to ensure that the Services are appropriate for the type of data that iomart hosts under this Agreement. iomart will act on reasonable instructions from you to tailor the Services to your business needs, but iomart does not provide any warranty regarding the adequacy of the Services and does not warrant that the Services, or their design, will protect your data from corruption, loss or degradation in all circumstances.

## 9. Termination

9.1 **Automatic Renewal.** Unless terminated by either party in accordance with this Agreement, this Agreement shall take effect on the Effective Date and shall continue for the Initial Term and thereafter will

automatically renew for consecutive periods of 12 months, each starting on the anniversary of the Start Date (each period being a "Renewal Term"). From the first day of each Renewal Term, the Charges will automatically increase by a percentage amount equal to the increase in the retail prices index (as published by the Office for National Statistics) for the previous calendar. If the change in the relevant index is zero or negative, the Charges will increase by 1%. Charges payable during each Renewal Term will be confirmed to you in writing at least 30 days in advance of the start of that Renewal Term. You have the right to bring the Agreement to an end in line with paragraph 9.2 if you do not agree to the Charges being increased in accordance with this paragraph.

9.2 **Terminating the Agreement on notice.** Either you or iomart can end the Agreement by giving the other party at least 90 days' written notice in advance of and to expire the end of the Initial Term or any subsequent Renewal Term. Alternatively, you can end the Agreement on 90 days' written notice to iomart if you do not agree to an:

9.2.1. iomart proposed change to the AUP which you can demonstrate materially and adversely will affect your business; or

9.2.2. increase in the Charges imposed under paragraph 9.1.

although you must serve that notice in writing no later than 30 days after the amended AUP or increase in Charges is notified to you. After expiry of that 30 day period, the change or increase that was notified to you will be deemed to have been agreed and will take effect immediately.

9.3 **Terminating the Agreement following a breach.** Either of us may end this Agreement with immediate effect on prior written notice to the other if the other materially breaches its obligations and (if such breach is capable of remedy) does not remedy that breach within 30 days after receipt of written notice from the other party to remedy such breach.

9.4 **iomart's specific rights to end the Agreement.** iomart may end this Agreement with immediate effect on written notice to you where:

9.4.1. you have breached the AUP; or

9.4.2. you suspend, or threaten to suspend, payment of your debts, or you are unable to pay your debts as they fall due or you admit inability to pay your debts, or (being a company) you are deemed unable to pay your debts within the meaning of section



123 of the Insolvency Act 1986, or (ii) you commence negotiations with all or any class of your creditors with a view to rescheduling any of your debts, or make a proposal for or enter into any compromise or arrangement with your creditors other than (in the case of a company) for the sole purpose of a scheme for a solvent amalgamation with one or more other companies or the solvent reconstruction of your company; or (iii) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of you (being a company) or (iv) an application is made to court, or an order is made, for the appointment of an administrator, or an administrator is appointed over you (being a company); or (v) the holder of a qualifying floating charge over your assets (being a company) has become entitled to appoint or has appointed an administrative receiver; or a person becomes entitled to appoint a receiver over your assets or a receiver is appointed over your assets; or (vi) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, you or any part of your assets and such attachment or process is not discharged within 14 days; or any event occurs, or proceeding is taken, in any jurisdiction to which you are subject that has an effect equivalent or similar to any of the events mentioned in this paragraph; or

9.4.3. you suspend or cease, or threaten to suspend or cease, carrying on all or a substantial part of your business.

9.5 If section 233A of the Insolvency Act 1968 (as amended by the Insolvency (Protection of Essential Supplies) Order 2015) applies, iomart's right to terminate this Agreement under paragraphs 11.4.2 and 11.4.3 above shall be suspended only to the extent that iomart is unable to contract out of this section.

9.6 **Continuing liability.** However this Agreement ends, each of us will still be responsible for claims or liability (including payments due) relating to the time before the Agreement ended.

9.7 **The position after the Agreement ends.** When this Agreement expires or terminates:

9.7.1. iomart will immediately stop providing the Service;

9.7.2. payments due or payable by you under this Agreement will become due and payable immediately, including any unpaid Charges due for the remainder of the

Initial Term or any Renewal Term (except where the Agreement has ended for

iomart's material breach under paragraph 9.3);

9.7.3. within 30 days after this Agreement ends, each of us will return all Confidential Information of the other in its possession at the time this Agreement ends and will not make or keep any copies of that Confidential Information except as required to comply with any applicable legal or accounting record keeping requirement.

9.8 **Data Destruction.** iomart will process hard disk drives that are used in the provision of the service as follows:

9.8.1. at the end of this Agreement, any hard disk drive provided exclusively as part of the Service will be made available for collection and iomart will charge you the cost of the hard disk drive. Alternatively, iomart will arrange for secure erasure and destruction of the hard disk at your expense;

9.8.2. in the case of a failure of a hard disk that is under the manufacturer's warranty, iomart will, by default, return the disk unaltered to the manufacturer for repair or replacement. Alternatively, if requested in writing by you, iomart will arrange for the secure erasure and destruction of the hard disk and for the purchase of a replacement disk, all at your expense.

9.9 **Termination Assistance.** Where this Agreement is terminated for any reason, iomart's sole duty to provide termination assistance shall be to allow you to access your data for the purposes of transferring this to you or to a replacement service provider. Iomart may at its discretion provide such other termination assistance as the parties shall agree in these circumstances, but shall not be obliged to do so.

9.10 **Termination of SLA.** On termination or expiry of this Agreement for any reason, any service levels set out in the SLA which apply to the Services, will no longer apply and will cease to have effect. Service levels will not apply to the provision of any termination assistance pursuant to paragraph 9.9 or any Services that continue for any reason after expiry or termination.

9.11 **Survival.** On termination or expiry of this Agreement for any reasons, the following paragraphs shall survive and continue in full force and effect: paragraph 4.6 (insurance), paragraph 5.9 (payment of invoices) paragraph 5.12 (Interest charge); paragraph 7 (third party claims), paragraph 8 (limits of liability), paragraphs 9.6 - 9.10 (termination), paragraph 10 (protection



of confidential information), paragraph 11 (protection of personal data), paragraph 13.8 (dispute resolution), paragraph 13.13 (governing law).

controller and permit you to audit those measures on reasonable prior notice.

## 10. Protection of Confidential Information

**10.1 Information concerned.** Each of us acknowledges that we will have access to certain confidential information of the other party concerning the other party's business, plans, customers, technology, and products, including the terms and conditions of this Agreement, proprietary software and customer information ("Confidential Information").

**10.2 Maintaining secrecy.** Each of us agrees that except as expressly permitted under this Agreement, we will not use in any way, for our own account or the account of any third party, nor disclose to any third party, except as required by law or as reasonably necessary to that party's professional advisors (or in iomart's case, to the other operators of iomart's global network), any of the other party's Confidential Information and that we will each take reasonable precautions to protect the confidentiality of that information.

**10.3 Exceptions.** Information will not be deemed Confidential Information if that information (i) was already known or becomes known to the receiving party from a source other than the disclosing party; (ii) becomes publicly known or becomes no longer secret or confidential, except through a breach of this Agreement by the receiving party; (iii) is independently developed by the receiving party; or (iv) is required to be released by law or regulation, provided that the receiving party promptly informs the disclosing party in writing of the impending release, and the releasing party co-operates fully with the disclosing party to minimise the extent of the release.

## 11. Protection of Personal Data

**11.1** In this paragraph 11, the terms "personal data", "data", "data subject", "data controller", "sensitive personal data", "data processor" and "processing" have the meanings that they have in the DPA Regulations.

**11.2** Each of us will, in the performance of our obligations under this Agreement, comply with the DPA Regulations applicable to us.

**11.3** In addition, if iomart receives from you or processes any personal data on your behalf, iomart will, acting as data processor:

**11.3.1.** only process that personal data in accordance with this Agreement and your instructions;

**11.3.2.** not transfer any of the personal data outside the European Economic Area unless directed to do so by you in writing; and

**11.3.3.** implement appropriate technical and organisational measures against unauthorised or unlawful processing of that personal data as if iomart was the data

**11.4 International clients.** You acknowledge and agree that if you are a business located in a territory out with the European Union (EU), it is your responsibility to ensure compliance with the DPA Regulations (or equivalent) in relation to transfers of your personal data from iomart to you.

**11.5 PCI DSS Requirements.** In accordance with best practice as described in the Payment Card Industry Data Security Standard (PCI DSS) scheme to safeguard sensitive credit and/or debit card data:

**11.5.1.** should you use the Services to store, process or transmit credit or debit card information you will comply with the PCI DSS requirements; and

**11.5.2.** you will take all necessary steps to ensure you are properly advised by your card acquirer or a PCI DSS Qualified Security Assessor (QSA) with regards to your obligations and appropriateness of your Service.

**11.6 Business Continuity.** iomart warrants that it has and will undertake to maintain a business continuity plan for its operations that is consistent with the international standards ISO 22301 and ISO 27001. While iomart takes all steps provided in this Agreement to protect your data, this does not constitute an absolute guarantee that a third party will not try to access, interrupt, delete or compromise customer's data. Customer is therefore responsible for determining the ultimate safety and integrity of its data.

## 12. General Provisions

**12.1 Unenforceable Provisions.** If any part of this Agreement is found by a court or other competent authority to be illegal or unenforceable then the rest of this Agreement will remain valid.

**12.2 Circumstances outside either party's control.** Except for the obligation to pay money, neither you nor iomart will be liable for any failure or delay in meeting our respective obligations under this Agreement, or for credits due under the SLA, due to any cause beyond its reasonable control, including act of war, acts of God, earthquake, flood, embargo, riot, terrorist activity, sabotage, labour shortage or dispute, governmental act or failure of the Internet, provided that whichever of us is affected: (a) gives the other prompt notice of the situation; and (b) uses reasonable commercial efforts to correct promptly the failure or delay in performance.

**12.3 Property rights.** This Agreement is a services agreement and is not intended to and does not grant a lease or licence over any real or personal property. In particular, you acknowledge and agree that you have not been granted any real property interest in the Data Centre or in iomart's other premises (including the location where the Services are provided), and you have no rights as a tenant or otherwise under any real property or landlord/tenant/tenant laws, or regulations.



**12.4 Transfer of rights.** This Agreement is personal to you and you may not assign or transfer your rights or subcontract your obligations under this Agreement either in whole or in part without iomart's prior written consent. We will not unreasonably refuse that consent.

**12.5 Notices.** Any notice given under this Agreement must be in writing and may be delivered personally, deposited with an overnight courier, sent by confirmed facsimile, or mailed by registered or certified mail, return receipt requested, postage prepaid, in each case to the relevant address indicated above, or such other address as either of us may nominate in writing. That notice will be deemed to have been given on the date delivered, or 5 days after mailed or sent, whichever is earlier.

**12.6 Status of the parties.** iomart and you are independent contractors and this Agreement does not create any partnership, joint venture or agency or employee relationship. Neither of us has authority to enter into any contract on behalf of the other.

**12.7 Changes to the Agreement.** This Agreement may only be amended if both of us agree in writing.

**12.8 Dispute resolution.** If a dispute arises between you and iomart relating to this Agreement you and iomart will use reasonable commercial efforts to resolve the dispute at senior management level within 28 days of the dispute arising, failing which:

**12.8.1.** you and iomart agree that, within 14 days of the failure to resolve the dispute, either of us may pass the dispute to an Alternative Dispute Resolution ("ADR") procedure officer of the Centre for Dispute Resolution ("CEDR") as adopted by a suitable qualified mediator in London, England appointed by the senior executive officer of CEDR. Each of us will meet our own costs in those proceedings unless we agree otherwise as part of any settlement. If the dispute has not been resolved within a further 28 days or if either of us refuses or

ceases to participate in an ADR procedure, or you and iomart cannot agree on an ADR procedure within 14 days of the failure to resolve the dispute, either of us may refer the dispute to the English Courts; and

**12.8.2.** nothing in this paragraph prevents either of us from going to court to seek a preliminary injunction or other order at any time if either of us thinks that such an action is necessary.

**12.9 Delay in exercising rights.** If either of us does not exercise a right which we have under this Agreement or at law, or if either of us delays in exercising that right, we will not be prevented from exercising that right at a later date.

**12.10 Documents making up this Agreement.** A Sales Order Form and these Terms and Conditions, together with any schedules or appendices referred to in either document, make up the complete agreement and understanding between us in relation to the Services and replace any other agreement or understanding between us, written or oral. If a conflict is identified between the Sales Order Form and these Terms and Conditions, the Sales Order Form will take precedence.

**12.11 Status of headings.** Headings have been included for convenience only and will not be used in constructing any provisions of this Agreement.

**12.12 Interpretation.** Any references in this Agreement to words in the singular include the plural and vice versa. Where the words "includes" or "including" are used, the words that follow are examples only.

**12.13 Governing law.** This Agreement and any claims arising out of it or in connection with it (including non-contractual claims) will be governed by English law and both of us agree that the English Courts will have non-exclusive jurisdiction.