

STANDARD TERMS FOR TENDER SAFE

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

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

"Agreement" means the standard terms and conditions of M3 Housing Ltd, as set out on www.m3h.co.uk;

"Available" means that the Tender Safe Service is able to be accessed over the internet at the Website;

"Confidentiality Agreement" Means the confidentiality agreement provided by the Distributor and appended in Schedule 1, as modified by agreement between the Parties;

"Tender Period" means a period of time agreed between the Customer and the Distributor during which Users may access the Tender Safe Service, which will not normally exceed three calendar months;

"Tender Safe Service" means the Tender Safe application service provided by the Distributor on the Website for access by the Customer and Users;

"Unavailable" means a period when the Tender Safe Service is not Available, but excluding all periods:

a) of scheduled maintenance of the Tender Safe Service,

b) during which any third party services and/or equipment necessary for provision of the Tender Safe Service are not fully operational or functional,

c) about which the Customer is given prior notification that the Tender Safe Service will be unavailable or operating with limited functionality, and/or

d) during which the Tender Safe Service has been suspended by the Distributor in accordance with the Agreement;

"User" means an individual who uses the Tender Safe Service to download tender documents from the Customer;

"Website" means the website having the URL www.m3h.co.uk/tendersafe, and any other website for time to time being operated by or on behalf of the Distributor in addition to or in substitution for or as an alternative to such website.

Grant

2. Subject to, and in consideration of, the payment of the Initial Fee the Distributor shall provide, and grants the Customer, a non-exclusive, non-transferable licence to use, the Tender Safe Service, in accordance with these standard terms and the terms of the Agreement.
3. The Tender Safe Service shall constitute a "Service" as defined in and for the purposes of the main body of the Agreement.

Use

4. For the purposes of paragraph 1, "use" of the Tender Safe Service shall be restricted to use by the Customer and Users by way of access to the Website for the purposes and in the manner specified herein.

5. The Service

- 5.1 Under the Tender Safe Service, the Distributor shall:
 - 5.1.1 make the Website available to enable Users to download tender documents to Users that have signed up to a Confidentiality Agreement;
 - 5.1.2 use its reasonable endeavours to make the Website available on a 24 hour-a-day basis (excluding scheduled downtime for maintenance);
 - 5.1.3 on the Customer's behalf, use its reasonable endeavours to process and deliver download requests to the User
 - 5.1.4 monitor, maintain and updating the Service; and
 - 5.1.5 provide updates and telephone and email support for Customers relating to use of the Website by Users.
- 5.2 The Customer acknowledges and agrees that the Distributor is not responsible for external communication systems when sending documents to Users in response to requests received via the Website.
- 5.3 The Distributor shall provide reasonable support for the Customer's use of the Tender Safe Service, and at its discretion use Customer suggestions where appropriate to improve the Service.
- 5.4 The Distributor accepts no responsibility for any data which is lost or corrupted due to user error, transmission failure or for any other reason.
- 5.5 Access to and downloading of any data from the Tender Safe Service is at the risk of the Customer and the Customer shall carry out all necessary virus checks in respect thereof. The Distributor makes no warranty that the Website and/or any 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.

Customer's obligations

6. The Customer agrees to indemnify the Distributor for any claims arising out of the use of the Tender Safe Service 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.
 - 6.1 The Customer shall ensure an Acceptable Use Policy is in place which shall as a minimum prescribe that:

- 6.2 Users shall not be permitted to use the content for any improper or illegal purposes or do anything which disrupts any computer networks or systems connected to, supporting or hosting the website.
- 6.3 Users shall not be permitted to interfere or attempt to interfere with the proper and uninterrupted operation of the website service, including by the introduction of viruses, worms, Trojan horses and denial of service attacks or similar.
- 6.4 where Users are permitted to post or submit material on or via the website, they may only do so for a purpose connected to the proper use of the service.

7. The Customer shall provide all facilities and information necessary for the configuring, set-up and successful implementation of the Service.

8. The Customer shall provide any other administrative information requested by the Distributor from time to time to keep the Customer's account up to date, including in accordance with Clause 4 of the Agreement.

9. **Termination**

9.1 In addition to its rights under the Agreement, the Distributor may terminate or suspend access to the Tender Safe Service (including access by individual named users) and terminate the Contract in the event of a serious or repeated breach of the Contract.

9.2 In addition to its rights under the Agreement, the Customer may terminate the Tender Safe Service as follows (save that in either case no Fees shall be refunded to the Customer):

9.2.1 at one month's notice at any time;

9.2.2 at the end of the Tender Period.

10. **Service Levels**

10.1 If the Tender Safe Service is Unavailable for an aggregate period exceeding 48 hours of the time during the Tender Period, the Customer shall be entitled to a pro-rata refund of the Initial Fees payable with respect to the total time during the Tender Period that the Service was unavailable..

10.2 The Distributor shall have no responsibility or liability for failure to provide the Tender Safe Service due to circumstances beyond its control. These may include problems with external communication systems, the Customer's mail servers or links or other setup problems on the Customer's side. The Distributor shall monitor the Tender Safe Service and report any apparent failures to the Customer.

Changes

11. The Distributor reserves the right to make changes to the Tender Safe Service when it considers it reasonable to do so. Any such changes shall be notified to the Customer in writing at least 21 days before being implemented.

12. **Fees**

12.1 The Initial Fee shall cover the set-up charges incurred in configuring the Service to the Customer's requirements.

12.2 The Client acknowledges that the Initial Fee may be varied in accordance with the terms of the Agreement.

12.3 The Initial Fees and are set out on www.m3h.co.uk.

12.4 If the Customer fails to make payment of any Fees when due then, without prejudice to any other right or remedy the Distributor may have, the Distributor shall be entitled to suspend the Service with notice until such payment is made in full.

13. **Support Services**

13.1 The availability of a helpdesk facility to respond to queries made by telephone and email, usually within two Business Days.

13.2 Response to bug reports within two Business Days, such response to include one or more of the following, at the Distributor's sole discretion:

13.2.1 a fix for the bug;

13.2.2 a workaround to enable the Customer to continue using the feature for which a bug has been reported, or

13.2.3 a timetable for resolution.

13.3 Making updates to the Website to remedy bugs or to enhance existing features.

13.4 Making available upgraded versions of the Website that may include enhancements to the performance or features of the Website.

Schedule 1

CONFIDENTIALITY AGREEMENT

BETWEEN

M3 HOUSING LIMITED, a company registered in England and Wales under Company Number 04966582 whose registered office is at 5 Commonside East, Mitcham, Surrey CR4 2QA (hereinafter called the "Distributor"; and

[], a social housing landlord or local authority housing department or their managing agent whose office is at [] (hereinafter called the "Client"); and the Contractor.

Each a "Party" and together the "Parties"

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

"Confidential Information"	means all documents provided for the preparation of a tender for the Client in connection with the Purpose, whether in written or pictorial form, orally or electronically, and which is either clearly identified as confidential at the time of disclosure or is otherwise clearly confidential in nature;
"Contractor"	means the organisation identified on the Order as wishing to submit a tender to provide services to the Client, which may include works or consultancy services
"Discloser"	means the Distributor or the Client;
"Order"	means an electronic order form, completed by the Contractor and submitted to the Distributor via the website at www.m3h.co.uk that identifies the Contractor and the Client in accordance with this Agreement;
"Purpose"	means preparation of a tender submission to the Client

2. The Contractor agrees to only use the Confidential Information for the Purpose, agrees to maintain the Confidential Information in confidence and (other than as set out in this Agreement) agrees not to divulge any of the Confidential Information to any third party without the Discloser's prior written permission.
3. The Contractor will restrict access to the Confidential Information only to those of its employees who need to access the Confidential Information for the Purpose and will procure that all employees to whom the Confidential Information is disclosed will keep the same confidential and use it solely for the Purpose.
4. The Client warrants that it owns or is otherwise entitled to use all proprietary rights (including copyright, trade marks, patents and all other intellectual property rights) in the Confidential Information and that any disclosure of the Confidential Information, made in accordance with this agreement, will not be in breach of the rights of any third party.
5. The Contractor acknowledges that the Discloser (or the Discloser's third party licensors) own all proprietary rights (including copyright, trade marks, patents and all other intellectual property rights) in the Confidential Information. Save to the extent that the Contractor is entitled to use the Confidential Information for the Purpose, the disclosure of the Confidential Information shall not be deemed to transfer any right, title or interest in the Confidential Information to the Contractor.
6. The Contractor will only take such copies or extracts of the Confidential Information (including reducing the Confidential Information to writing in any form) as are reasonably necessary for the Purpose. The Contractor shall at the Discloser's request return (or at the Discloser's discretion, destroy and confirm such destruction of) all or any of the documents or other material containing or

embodying the Confidential Information together with all copies and extracts taken by the Contractor. The Contractor shall arrange for the return of the same by any third party to whom disclosure of any of the Confidential Information has been made as permitted by this Agreement.

7. The restrictions on use or disclosure of the Confidential Information will not apply to:
 - 7.1 any information which is generally available to the public (provided this is not as a result of a breach of this Agreement or any other duty of confidentiality);
 - 7.2 any information received by the Contractor from third parties who are not subject to any confidentiality obligations in respect thereof;
 - 7.3 any information which is independently or lawfully developed by the Contractor without the use of the Confidential Information;
 - 7.4 any information which is required by law to be disclosed pursuant to an order of a Court or equivalent authority.
8. The Parties acknowledge and agree that:
 - 8.1 neither the Discloser, nor their employees, advisers, agents or officers make any representation, statement or expression of opinion or warranty, express or implied, with respect to the accuracy or completeness of the Confidential Information or any related oral communication; and
 - 8.2 the provisions of this Agreement shall continue in effect notwithstanding any decision by either Party not to proceed with any further work relating to the Purpose.
9. The Parties agree that the obligations of confidentiality and non-use imposed pursuant to this Agreement shall apply for a period of twenty (20) years from the date hereof.
10. The Contractor acknowledges that the Confidential Information is highly confidential and commercially sensitive, that disclosure may cause irreparable damage to the Discloser and their business and that damages alone would not be an adequate remedy for any breach by the Contractor of the provisions of this Agreement. Accordingly, without prejudice to any and all other rights or remedies that the Discloser might have, the Discloser shall be entitled without proof of special damage to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of the provisions of this Agreement.
11. The terms set out in this Agreement constitute the entire agreement and understanding between the Parties with respect to the Confidential Information and supersede and cancel any prior representation, understanding and commitment (whether oral or written) between the Parties with respect to the Confidential Information. The terms of this Agreement can only be varied by the agreement of the Parties in writing.
12. If at any time any provision of this Agreement is found to be illegal, unenforceable or invalid in whole or in part then the remaining portions of such provisions and other provisions of this Agreement continue to be binding and in full force and effect.
13. This Agreement shall be construed in accordance with the laws of England and Wales and the Parties hereby irrevocably submit to the non-exclusive jurisdiction of the Courts of England and Wales to settle any disputes which may arise in connection with this Agreement.