

Constructionline Supplier Terms and Conditions

PLEASE NOTE: These terms of business govern the relationship between us Fortius Limited with company number 11188766 t/a Constructionline and/or Facilitiesline (“Us”, “We”, “Our”) to You in your capacity as a Supplier. Please read these carefully as they affect Your rights under the law and take effect to become binding on You without a requirement for Your signature (please see clause 2 below for more detail on this). By continuing to access our Site or use our Services you are deemed to agree these terms.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

In this Agreement each of the following words and expressions shall have the following meanings:-

Agreement:	the agreement between Us and each Supplier, which is stated herein to apply to You as a Supplier, which consists of these Supplier Terms and Conditions, the Terms of Use and Site Terms of Use;
API	an application programming interface service allowing Buyers to digitally extract information from the SaaS Platform in relation to Suppliers in their current or prospective supply chain;
Application Form	the profile-builder form which prospective Suppliers are required to complete on the Site in order to become a Supplier;
Application Support Services:	the service support desk which is available via phone, email and live chat during Normal Business Hours;
Authorised Users:	those employees, agents and independent contractors of the Supplier who are authorised by the Supplier to use the Services;
Build UK RABs:	any Common Assessment Standard recognised assessment bodies appointed by Build UK from time to time;
Business Day:	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
Confidential Information:	information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information;
Common Assessment Standard:	an industry-agreed question set created by Build UK and available through Us or the Build UK RABs, with two levels of certification (desktop and site-based);
Controller:	has the meaning set out in Data Protection Legislation;
Data:	collated data inputted by the Supplier on the SaaS Platform at any time which is verified and maintained by Us and made available to Buyers who may decide to access their services and Build UK RABs;
Data Protection Legislation:	the UK Data Protection Act 2018 which implements the General Data Protection Regulations (EU) 2016/679 and all other legislation and regulatory requirements in force in the United Kingdom from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications);
Data Subject:	has the meaning set out in the Data Protection Legislation and includes, without limitation, current and former employees of either party;
Fee(s)	the fee(s) payable by the Supplier to Us in accordance with the Membership Category(ies) selected, as indicated from time to time on the Site, including without limitation any Renewal Fee;
Group:	in relation to a company, that company, any subsidiary or holding company of that company, and any subsidiary of that company;
Implementation Services:	the set-up of the Supplier on the SaaS Platform;
Intended Purpose:	the Suppliers’ intended purpose of registering on the SaaS Platform, so that information about them is held by Us and (i) accessed by Buyers via the SaaS Platform so that the Buyers can access their services and/or (ii) shared by Us with Build UK RABs for the purposes of the construction

Key Commercial Terms:	industry Common Assessment Standard; the commercial terms agreed between the parties as set out at the head of this Agreement;
Membership:	the Supplier's membership permitting them to make use of Our Services via the SaaS Platform, subject to the Membership Category(ies) they select at Registration;
Membership Bolt-Ons	additional services made available by Us from time to time which are supplemental to the Services including, but not limited to, Our Concierge service which assists Supplier's in ensuring their Data remains verified at all times whilst they are Members;
Membership Category(ies)	the category or categories (as applicable) as described on the Site, chosen by the Supplier during Registration which indicate to Us which type of Services the Supplier requires;
Normal Business Hours:	0900 to 1700 local UK time, each Business Day;
Permitted Purpose:	the purpose of the Processing as described at clause 3.2.1;
Personal Data:	has the meaning set out in the Data Protection Legislation which may include, but is not limited to, basic identification information for example, address, title, telephone number, email address, occupation and employer;
Personal Data Breach:	has the meaning set out in Article 4(12) of the GDPR;
Privacy Notice:	Our privacy notice, available at https://www.constructionline.co.uk/privacy-policy/ and/or https://www.facilitiesline.co.uk/privacy-policy/ as may be amended from time to time;
Processor or Processing:	has the meaning set out in the Data Protection Legislation;
Registration	the process Suppliers are required to complete in order to become a Supplier on the SaaS Platform in accordance with the registration requirements and applicable criteria detailed on the Site, which may be amended and/or updated from time to time;
Renewal Date:	the anniversary of the Supplier's Registration Date;
Renewal Fee	the Fee payable annually for the renewal of the Supplier's Membership in accordance with clause 2, as set out on the Site from time to time and as invoiced to the Supplier by Us in advance of the Supplier's Membership Renewal in accordance with clause 2.3;
SaaS Platform:	Our Software as a Service platform hosted in Microsoft Azure Cloud Platform;
Services:	the SaaS Platform, Application Support Services and Implementation Services, and subject to the Membership Categories selected by the Supplier, the Verification Services and Membership Bolt-Ons (if applicable) for the Intended Purpose;
Services Description:	the services We provide to the Supplier, depending on the Membership Category the Supplier has chosen during Registration and access to the SaaS Platform;
Site Terms of Use	the terms and conditions detailed within the Legal section on the Site which set out the Supplier's obligations in respect to their access to and use of the Site;
Sites:	Our websites at www.constructionline.co.uk , www.facilitiesline.co.uk and the SaaS Platform accessible via the websites for Suppliers and prospective suppliers;
Software:	Our SaaS Platform, which may be updated by Us from time to time, through which the Services are provided;
Software Licence	the Software licence granted to the Supplier by Us in accordance with clause 3.2.1 and the Terms of Use;
Suppliers:	the person(s), organisations and their Authorised Users that have successfully registered with the Us via the SaaS Platform for the Intended Purpose;
Support Services:	the services used to ensure the SaaS Platform is available for the Supplier's use and include hosting, monitoring, fault identification,

Term:	rectification and Supplier support during Normal Business Hours.
Terms of Use:	has the meaning given in clause 2.1; the terms of use for the SaaS Platform appended to this Agreement;
Verification Services:	Our review and validation of data submissions by the Suppliers (where this is included in the Membership Categories selected and as updated from time to time) to ensure conformance to a relevant standard requirement as described in the Membership Categories;
Virus:	anything or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

1.1 In this Agreement, except where the context otherwise requires:

- 1.1.1 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement
- 1.1.2 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns;
- 1.1.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- 1.1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.1.6 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement.
- 1.1.7 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.
- 1.1.8 A reference to writing or written includes faxes but not e-mail.
- 1.1.9 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.

2. DURATION AND RENEWAL

- 2.1 This Agreement shall, unless otherwise terminated as provided in clause 13, commence on the date We receive payment of your initial Supplier Fee or if no Fee is payable, on the date you complete your registration to join the SaaS Platform.
- 2.2 This Agreement shall continue for 12 months unless terminated earlier in accordance with clause 13 of this Agreement.

2.3 Unless it has been terminated or downgraded in accordance with this Agreement, the Supplier's Membership (and this Agreement) will automatically renew on an annual basis and We will invoice the Supplier the Renewal Fee in accordance with clause 8.4.

2.4 In the event We do not receive payment of the Renewal Fee within 30 days of the date of invoice, the Supplier will be downgraded to a Membership Category that does not include Verification Services.

3. **SERVICES**

3.1 The Services described in this clause 2 are provided by Us to the Supplier via the website www.constructionline.co.uk or <https://www.facilitiesline.co.uk> (or any other website notified to the Supplier by Us from time to time) subject to the terms of this Agreement and in accordance with clause 5.1.

3.2 SAAS PLATFORM

3.2.1 Subject to the Supplier purchasing a Membership in accordance with clause 8.1, the terms of this Agreement and in particular the Terms of Use, We hereby grant to the Supplier a non-exclusive, non-transferable licence, without the right to grant sublicences, to permit the Authorised Users to use the SaaS Platform during the Term solely for the Intended Purpose.

3.2.2 For the avoidance of doubt, the rights provided under this clause 3.2 are granted to the Supplier only and shall not be considered granted to any subsidiary or holding company of the Supplier who are required to undertake Registration on their own account.

3.2.3 We reserve the right to undertake an audit at any time to ensure that only the Authorised Users have access of the SaaS Platform under this Agreement. Such audit shall be conducted at Our expense, and with reasonable prior notice, in such a manner as not to substantially interfere with the Supplier's normal conduct of business. Where any audit reveals that non-Authorised Users have access to the SaaS Platform or We reasonably believe that any Authorised User is in breach of this Agreement, then We shall, without liability and as soon as practicable, disable passwords enabling their access until the Supplier has paid Us an amount equal to any underpayment within 10 Business Days of the date of the relevant audit and/or any breach of this Agreement has been remedied to Our reasonable satisfaction.

3.3 SERVICES

Subject to the grant of the Software Licence, We will provide the Supplier with the Services which may include one or more of the Application Support Services, the Implementation Services and the Verification Services.

4. **SUPPLIER'S OBLIGATIONS**

4.1 The Supplier agrees that they:

4.1.1 shall complete the Registration process (including the Application Form) via the Site and as part of Registration, the Supplier will choose the Services they would like to purchase from Us;

4.1.2 acknowledge and agree a separate Membership is required for each company in the Supplier Group that wish to access the Services;

4.1.3 shall provide contact details of at least one employee as point of contact for all matters relating to the Services and this Agreement;

4.1.4 will not access the Services until their Application Form has been completed and authorised by Us;

- 4.1.5 agree any Fee paid at Registration will not be refunded where We do not receive a completed Application Form as part of Registration and We are therefore unable to process the application in order for the Supplier to access the SaaS Platform and the Services;
- 4.1.6 use the SaaS Platform and make use of the Services only for the Intended Purpose;
- 4.1.7 warrant that the information provided by the Supplier or on its behalf by any third party (including, but not limited to, consultants) to Us during Registration and on their Application Form is in English (or translations are made available), current, accurate and complete and not misleading;
- 4.1.8 remain responsible for the acts of any third party engaged to assist the Supplier with its Registration, Application Form or Membership administration. An obligation on the Supplier to do, or refrain from doing, any act or thing shall include an obligation on the Supplier to procure its employees, staff, agents and subcontractors also do, or refrain from doing, such act or thing.
- 4.1.9 shall, without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement;
- 4.1.10 shall carry out all other Supplier responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Supplier's provision of such assistance as agreed by the parties, We may adjust any agreed timetable or delivery schedule as reasonably necessary; and
- 4.1.11 shall ensure that the Authorised Users use the Services in accordance with the terms and conditions of this Agreement, including the Terms of Use and shall be responsible for any Authorised User's breach of this Agreement.

5. OUR OBLIGATIONS

- 5.1 Upon payment of the Fees, We shall process the Supplier's Application Form and if the Supplier is eligible, the Supplier's Data will be included on the SaaS Platform's database subject to the provisions of cause 6 (Data).
- 5.2 We undertake that the Services will be performed with reasonable skill and care.
- 5.3 The undertaking at clause 5.2 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary Our instructions, or modification or alteration of the Services by any party other than Us or Our duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, We will, at Our expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Supplier with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Supplier's sole and exclusive remedy for any breach of the undertaking set out in clause 5.2.
- 5.4 We:
 - 5.4.1 do not warrant that the Supplier's use of the Services will be uninterrupted or error-free or that the Services will comply with any Heightened Cybersecurity Requirements; and
 - 5.4.2 are not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Supplier acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 5.5 We warrant that We have and will maintain all necessary licences, consents, and permissions necessary for the performance of Our obligations under this Agreement.

6. DATA

- 6.1 The Supplier warrants that Our inclusion of the Data on the SaaS Platform for use by the Buyers will not infringe the right of another person in respect of any trademarks or any other Intellectual Property Rights.
- 6.2 The Supplier will indemnify Us for any royalty, compensation or other amount which We become liable to pay to any other person in connection with the Supplier's breach of clause 6.1 above.
- 6.3 For the duration of this Agreement, the Supplier is entitled to review the Data on the SaaS Platform (by giving Us reasonable notice) during Normal Business Hours.
- 6.4 The Supplier is responsible for telling Us if the Data on the SaaS Platform is not correct or up to date.
- 6.5 The Supplier will notify Us in writing immediately if the Data is no longer correct, or if the Supplier becomes aware that any of its Data is not correct, will send Us any information it may reasonably need or ask for to make the Data correct. We will amend the information on the SaaS Platform within 14 days of notification from the Supplier about any necessary amendments.
- 6.6 Unless the Supplier notifies Us otherwise, We will assume that the Data on the SaaS Platform is correct and up to date.
- 6.7 The Supplier will indemnify Us for any claims, losses, liabilities, costs and expenses We suffer as a result of any false, inaccurate, out of date or misleading information the Supplier provides or uploads to the SaaS Platform.
- 6.8 The Supplier agrees that We are entitled to make any alterations We consider necessary or desirable to the Data displayed via the SaaS Platform at any time as long as the information contained still accurately reflects the Data provided by the Supplier.
- 6.9 The Supplier acknowledges and agrees that the Data will be made available to the Build UK RABs pursuant to clause 7.4.4, the Buyers and may be extracted via an API by the Buyers.
- 6.10 If the Supplier includes two or more legal persons, they are each be liable jointly and separately for any liability the Supplier may have under this Agreement.

7. DATA PROTECTION

- 7.1 The parties agree to perform their obligations under this Agreement in accordance with Data Protection Legislation.
- 7.2 During Registration, We will collect Data from the Supplier as defined in the Privacy Notice which would constitute Personal Data (as defined by Data Protection Legislation), including without limitation information on your directors and other company officers. The Personal Data will be used for the purposes as defined in the Privacy Notice.
- 7.3 In respect of clause 7.2, the parties acknowledge and agree that in respect of any Personal Data which is to be Processed in respect of the matters relating to this Agreement, each party shall act as an independent Data Controller and shall comply with their respective obligations under Data Protection Legislation.
- 7.4 The Supplier warrants that it has the correct lawful grounds and basis for providing to Us, or allowing Us to collect from the Supplier, such Personal Data that will permit Us to use the Personal Data for:
 - 7.4.1 the provision of the Services in accordance with the terms of this Agreement;
 - 7.4.2 the purposes as defined in the Privacy Notice and the Intended Purpose;

- 7.4.3 verifying the Supplier's compliance with the warranty provided under clause 4.1.7 above, notwithstanding that We are not obliged to do so;
 - 7.4.4 sharing Data with other Build UK RABs for the sole purpose of demonstrating that a Supplier has been certified to the Common Assessment and Our third party marketing software provider; and/or
 - 7.4.5 any other purpose in connection with Our delivery, development and/or improvement of the Services.
- 7.5 The Supplier grants Us a non-exclusive and non-transferable right to use Data provided to Us at any time for the purpose of providing the Services, facilitating the Supplier's use of the Services or for the development and/or improvement the Services. In respect of this clause 7.5, the Supplier shall not be identifiable from the Data which is anonymised and only represented in aggregate with data from other Suppliers using the SaaS Platform.
- 7.6 The Parties each acknowledge and agree that they may need to Process Personal Data relating to each Party's representatives (in their respective capacities as Controllers) in order to (as appropriate): (a) administer and comply with the terms of this Agreement; (b) manage the Agreement and resolve any disputes relating to it; (c) respond and/or raise general queries relating to the Agreement; and (d) comply with their respective contractual, legal and regulatory obligations.
- 7.7 Each Party shall also Process such Personal Data relating to each Party's representatives for the purposes set out in Clause 7.6 in accordance with their respective privacy policies. The Supplier acknowledges receipt of Our Privacy Notice and agrees to bring it to the attention of all Supplier Data Subjects.
- 7.8 The Parties acknowledge that they may be required to share Personal Data relating to each Party's representatives with their affiliates, group companies and other relevant parties, within or outside of the country of origin, in order to carry out the activities listed in Clause 2 and in doing so each Party will ensure that the sharing and use of this Personal Data complies with applicable Data Protection Legislation.
- 7.9 Each party shall ensure that it has in place appropriate technical and organisational measures, capable of review by the other party, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, personal data, sufficient to comply at least with the obligations imposed on a Controller by the Data Protection Legislation and shall take reasonable steps to ensure that any of its Personnel who have access to the Personal Data shall act in accordance with Data Protection Legislation and the terms of this Agreement. We shall not be responsible for any loss, destruction, alteration or disclosure of Data caused by any third party (except those third parties sub-contracted by Us to perform services for which We shall remain fully liable under this Agreement).
- 7.10 The parties agree that they shall:
- 7.10.1 assist the other in responding to any request from a Data Subject and ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators and shall notify the other without undue delay on becoming aware of a Personal Data Breach;
 - 7.10.2 on the written direction of the other, delete or return Personal Data and copies thereof to other on termination of the Agreement subject to Our data retention policy and/or Privacy Notice unless required by Data Protection Legislation to store the Personal Data (and for these purposes the term "delete" shall mean to put such data beyond use); and
 - 7.10.3 maintain complete and accurate records and information to demonstrate its compliance with this Data Protection Legislation. .

- 7.11 If there are any amendments or modifications to Data Protection Legislation including any requirement to amend, update, modify or replace any systems We use to Process the Personal Data, then the parties shall take such steps as are necessary to ensure compliance with Data Protection Legislation.
- 7.12 The parties acknowledge and agree that Data may be transferred outside the United Kingdom for the Intended Purpose or for any other reason outlined in this Agreement. Data will not be transferred to any third party located outside the United Kingdom unless such transfer is permitted in accordance with Data Protection Legislation and either (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 of the GDPR or (ii) there are appropriate safeguards in place equivalent to those provided under Data Protection Legislation.

8. FEE AND PAYMENT

- 8.1 The Supplier shall pay Us the Fee applicable to the Membership Category(ies) on their Application From as shown on the Site and in line with their invoice.
- 8.2 The Supplier acknowledges that part of Our Fee structure is set against the Supplier's turnover. In the event that the Supplier's turnover changes such that the Supplier moves into a new Fee bracket, the Supplier must advise Us of this without delay.
- 8.3 Fees are payable annually and the Supplier will be invoiced for each twelve-month period rolling from their first Registration date.
- 8.4 Invoices will be raised at least 30 days in advance of a Supplier's next due payment date.
- 8.5 Unless otherwise agreed in writing with Us, all annual membership payments shall be paid by Direct Debit or where supported by the Supplier's debit card and agreed by the Supplier upon Registration, by continuous payment authority on the Supplier's debit card. We reserve the right to charge a reasonable administration fee where alternative payment methods are agreed.
- 8.6 By submitting debit card details, the Supplier warrants they are entitled to purchase the Services using those payment details. In the event of an unauthorised payment, We reserve the right to suspend or terminate the Supplier's access to the Services.
- 8.7 The Supplier acknowledges and agrees that, once granted, any recurring payment method, including direct debits and/or continuous payment authority, shall remain in force until the Supplier instructs cancellation of the continuous payment authority in writing to Us and/or their card provider.
- 8.8 If no payment authorisation is received or payment authorisation is subsequently cancelled, We may immediately and without liability terminate this Agreement or suspend access to the SaaS Platform and Services.
- 8.9 If We have not received payment of any Fee or Renewal Fee within 30 days after the due date, without prejudice to any of Our other rights and remedies:
- 8.9.1 We may, without liability, either (i) disable the Supplier's password, account and access to all or part of the Services and We shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid or (ii) downgrade the Supplier's Membership Category to one that does not include Verification Services;
- 8.9.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of Barclays Bank plc from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment;
- 8.9.3 all amounts and prices stated or referred to in this Agreement shall be payable in pounds sterling, are subject to clause 12.3.2 and are non-cancellable and non-refundable in any circumstance; and/or

8.9.4 are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

8.10 The Supplier agrees that if:

8.10.1 We reject the Supplier's Application Form;

8.10.2 We deem it necessary to withdraw the Supplier's Data due to any breach of this Agreement;

8.10.3 the Supplier fails to achieve an accreditation via the SaaS Platform; or

8.10.4 the Supplier fails to provide the information requested by Us as part of the Application Form,

the Supplier shall remain liable to pay the Fee(s) incurred at Registration and shown in Our invoice in full. No refunds will be given.

8.11 We reserve the right to amend Our Fees at any time and any changes to Fees will come into effect at your next Renewal Date. For the purposes of this clause 8.11, the parties agree that email shall suffice as written notice.

9. **INTELLECTUAL PROPERTY RIGHTS**

9.1 The Supplier acknowledges and agrees that We and/or Our licensors own all intellectual property rights in the Services. Except as expressly stated herein, this Agreement does not grant the Supplier any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services.

9.2 The Supplier warrants that it shall at all times use the Services in accordance with the Terms of Use.

9.3 For the duration of this Agreement, the Supplier is permitted to use Our logos as depicted on the Site solely for the purpose of demonstrating their Membership and accreditation status with Us.

9.4 For the avoidance of doubt, We reserve the right to immediately suspend and/or terminate the Supplier's Membership, without liability, where We reasonably believe that the Supplier is in breach of this clause 9.

9.5 We confirm that We have all the rights in relation to the Services that are necessary to grant all the rights We purport to grant under, and in accordance with, the terms of this Agreement.

10. **CONFIDENTIALITY**

10.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:

10.1.1 is or becomes publicly known other than through any act or omission of the receiving party;

10.1.2 was in the other party's lawful possession before the disclosure;

10.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or

10.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence.

10.2 Subject to clause 10.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.

- 10.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 10.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 10.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 10.5 The Supplier acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Our Confidential Information.
- 10.6 No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 10.7 The above provisions of this clause 10 shall survive termination of this Agreement, however arising.

11. INDEMNITY

- 11.1 The Supplier shall defend, indemnify and hold harmless Us against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with an Authorised User's breach of clause 7 (Data Protection), clause 9 (Intellectual Property Rights) and/or Terms of Use, provided that:
- 11.1.1 the Supplier is given prompt notice of any such claim;
 - 11.1.2 We provide reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
 - 11.1.3 the Supplier is given sole authority to defend or settle the claim.
- 11.2 We shall defend the Supplier, its officers, directors and employees against any claim that the Supplier's use of the Services in accordance with this Agreement infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Supplier for any amounts awarded against the Supplier in judgment or settlement of such claims, provided that:
- 11.2.1 We are given prompt notice of any such claim;
 - 11.2.2 the Supplier provides Us with reasonable co-operation in the defence and settlement of such claim, at Our expense; and
 - 11.2.3 We are given sole authority to defend or settle the claim.
- 11.3 In the defence or settlement of any claim, We may procure the right for the Supplier to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 2 Business Days' notice to the Supplier without any additional liability or obligation to pay liquidated damages or other additional costs to the Supplier.
- 11.4 In no event shall We, Our employees, agents and sub-contractors be liable to the Supplier to the extent that the alleged infringement is based on:
- 11.4.1 a modification of the Services by anyone other than Us; or

- 11.4.2 the Supplier's use of the Services in a manner contrary to the instructions given to the Supplier by Us; or
- 11.4.3 the Supplier's use of the Services after notice of the alleged or actual infringement from Us or any appropriate authority.
- 11.5 The foregoing and clause 12.3.2 states the Supplier's sole and exclusive rights and remedies, and Our (including Our employees', agents' and sub-contractors') entire obligation and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

12. **LIMITATION OF LIABILITY**

- 12.1 The Services are provided to the Supplier on an "as is" basis and are not intended to be used as the sole basis for any business decision by a Supplier. In particular, We shall have no liability for (i) any damage caused by errors or omissions in the information provided by third parties and accessed via the SaaS Platform, including (without limitation) Marketplace, the accuracy and/or completeness of which it would not be possible and/or economically viable for Us to guarantee or (ii) any losses attributed to information, instructions or scripts provided to Us by the Supplier in connection with the Services, or any actions taken by Us at the Supplier's direction.
- 12.2 Nothing in this Agreement excludes the liability of either party: (a) for death or personal injury caused by the Supplier's negligence; or (b) for fraud or fraudulent misrepresentation.
- 12.3 Subject to clause 12.1:
 - 12.3.1 neither party nor any Build UK RABs shall be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement;
 - 12.3.2 Our total aggregate liability in contract, including under any indemnities given, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, howsoever arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total Fees paid by the Supplier for Membership during the 12 months immediately preceding the date on which the claim arose; and
 - 12.3.3 the total aggregate liability of any Build UK RABs in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, howsoever arising in connection with Data accessed pursuant to this Agreement, shall be limited to the total Fees paid by the Supplier for Membership during the 12 months immediately preceding the date on which the claim arose.
- 12.4 If the Supplier is a joint venture or partnership or any other organisation that is made up of more than one legal person, the Supplier's liability to Us under this Agreement is joint and several.

13. **TERMINATION**

- 13.1 Unless terminated in accordance with clause 8.8 or this clause 13, this Agreement shall automatically renew for successive periods of 12 months in accordance with clause 2.3. Without affecting any other right or remedy available to it, the Supplier may terminate this Agreement on 30 days' written notice to Us ahead of each Renewal Date.
- 13.2 Notwithstanding clause 13.1, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
 - 13.2.1 the Supplier does not complete their Registration within six (6) months of the start of this Agreement, unless otherwise agreed in writing with Us;

- 13.2.2 the Supplier fails to pay any amount due under this Agreement on the due date for payment and remains in default after being notified in writing to make such payment;
- 13.2.3 the other party commits a material breach of any other term of this Agreement which is irremediable (including, without limitation, the Supplier's failure to meet any of the Registration requirements issued from time to time, breach of clause 9 (Intellectual Property Rights) and/or a breach of the Terms of Use) or if remediable, fails to remedy that breach to Our reasonable satisfaction within a period of 7 days after being notified in writing to do so;
- 13.2.4 the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
- 13.2.5 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
- 13.2.6 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 13.2.7 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 that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 13.2.8 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- 13.2.9 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clauses 13.2.5 to 13.2.8 (inclusive);
- 13.2.10 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- 13.2.11 in accordance with clause 15.3.
- 13.3 On termination of this Agreement for any reason:
 - 13.3.1 all licences granted under this Agreement shall immediately terminate and the Supplier shall immediately cease all use of the Services, the Supplier shall be removed from the SaaS Platform with effect from the date of termination. For the avoidance of doubt, the Supplier will not be entitled to any refund of any Fee(s) paid;
 - 13.3.2 each party shall return and make no further use of any equipment, property, Services Description and other items (and all copies of them) belonging to the other party;
 - 13.3.3 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced;

- 13.3.4 either parties' rights or responsibilities are not affected and continue up to the date this Agreement ends and Clauses 6, 7, 10, 12, 21 and 25 will continue to apply following termination of the Agreement.

14. FORCE MAJEURE

Neither party shall have liability to the other under this Agreement, if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the other is notified of such an event and its expected duration.

15. VARIATION

- 15.1 We may change these Terms and/or Our Fees at any time and any such changes will vary this Agreement with the Supplier without the need for their consent.
- 15.2 We will notify such changes (including the date on which the change comes into effect) via a notice on the Site and where practicable by email and such changes will not come into force for at least 30 days after We give notice of them.
- 15.3 If the Supplier does not agree with the changes, the Supplier may serve notice in writing to terminate this Agreement at any time on 30 days' written notice. The Supplier will not be entitled to any refund or other damages or compensation from Us. Otherwise, the Supplier is deemed to agree any such changes by virtue of their continued use of the Services.
- 15.4 Save where this Agreement states otherwise, no variation of this Agreement shall be effective unless it is in writing and signed by the parties.

16. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

17. RIGHTS AND REMEDIES

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

18. SEVERANCE

- 18.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.
- 18.2 If any provision or part-provision of this Agreement is deemed deleted under Clause 18.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

19. ENTIRE AGREEMENT

- 19.1 This Agreement constitutes the entire Agreement between the parties and supersedes and extinguishes all previous Agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

19.2 Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement

19.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

19.4 Nothing in this clause shall limit or exclude any liability for fraud.

20. ASSIGNMENT & SUBCONTRACTING

20.1 The Supplier shall not, without Our prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

20.2 We may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of Our rights or obligations under this Agreement in compliance with Our ISO accreditations and/or certifications and any specific Buyer scheme requirements.

21. NO PARTNERSHIP OR AGENCY

21.1 This Agreement shall not prevent Us from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

21.2 Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

22. THIRD PARTY RIGHTS

22.1 Subject to clauses 22.2 and 22.3, this Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

22.2 The Supplier acknowledges and agrees that although We may enforce the terms of this Agreement for the benefit of the Build UK RABs, the Build UK RABs shall have the benefit of this Agreement as if they were a party to it and shall be entitled enforce the terms of this Agreement directly.

22.3 For the avoidance of doubt, the rights of the parties to rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.

23. NOTICES

23.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by recorded delivery post to the other party at its address set out in this Agreement, or such other address as may have been notified by that party for such purposes.

23.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

24. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute the one Agreement.

25. **GOVERNING LAW**

This Agreement and any dispute or claim arising under it or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

26. **JURISDICTION**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

APPENDIX
TERMS OF USE – SAAS PLATFORM

In its use of the SaaS Platform pursuant to clause 3.2 of this Agreement, the Supplier agrees that it shall not and shall procure that its Authorised Users do not:

1. except as may be allowed by any applicable law and to the extent expressly permitted under this Agreement: (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the SaaS Platform (as applicable) in any form or media or by any means; or (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the SaaS Platform; or
2. design or build a product or service which competes with the Services; or
3. use the SaaS Platform and/or Services for any reason other than the Intended Purpose or use the SaaS Platform to provide services to third parties;
4. license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the SaaS Platform available to any third party;
5. attempt to obtain, or assist third parties in obtaining, access to the SaaS Platform, other than as provided under this Agreement; or
6. introduce or permit the introduction of, any Virus into Our network and information systems.