

DATED _____ **[insert date]**

HOME CONNECTIONS LETTINGS LIMITED

-and-

[insert organisation name]

AGREEMENT FOR THE SUPPLY OF ONLINE SERVICES

THIS AGREEMENT is made the [DATE] day of [MONTH] [YEAR]

BETWEEN

- (1) **HOME CONNECTIONS LETTINGS LIMITED (HCLL)** (Company No 5375099) a company incorporated in England with its registered office at United House, North Road, Islington, London N7 9DP ("**HCLL**"); and
- (2) **[insert Council / RP name and address]** (the "**Housing Partner**").

WHEREAS:

- i. The Housing Partner has undertaken an procurement exercise to select a contractor to deliver ICT services for "[insert service title]" (a computerised system used to [describe service]).
- ii. HCLL was appointed preferred bidder by the Housing Partner following the procurement exercise. HCLL carries on the business of the supply of [insert service name] and has agreed to provide such services to the Housing Partner in accordance with the provisions of its tender made to the Housing Partner during the procurement exercise and this Agreement.
- iii. The Council/s and RPs have entered into a [retain or delete as appropriate: Partnership Agreement] which (inter alia) provides for [insert lead council if relevant] to make all contractual payments due under this Contract on behalf of the Housing Partner from time to time and contains provisions for the apportionment of such costs between the parties to that Agreement.

NOW IT IS AGREED that:

1 INTERPRETATION

1.1 In this Agreement, the following words and phrases shall have the following meanings:

“Agreement” means this agreement as amended, varied or restated from time to time;

“Business Day” means any day other than Saturdays, Sundays and English bank holidays save as otherwise agreed between the parties;

“Choice based lettings service” means a system of letting property incorporating an advertising scheme and mechanisms by which applicants express their interest in the properties so advertised and are prioritised according to the Housing Partner’s allocation scheme;

“Clarifications” means written statements made by HCLL to the Housing Partner during the Tender process;

“Confidential Information” means all information, whether technical or commercial (including all specifications, drawings and designs, disclosed in writing, on disk, orally or by inspection of documents or pursuant to discussions between the parties) where the information is either identified as confidential at the time of disclosure or ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure;

Date Protection Law means the Data Protection Act 1998 and Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426);

"EIR" means the Environmental Information Regulations 2004;

"Escalation Procedure" means the procedure detailed at Schedule 4;

["Escrow Agreement" means an escrow agreement in a form reasonably acceptable to HCLL, to be entered into with an escrow agent of HCLL's choosing, pursuant to which the Source Code Material shall be held in escrow by the escrow agent;]

"Fees" means the fees and charges to be paid to HCLL by the Housing Partner, as more particularly described and provided for in Schedule 5 to this Agreement;

"FOIA" means the Freedom of Information Act 2000 (as amended from time to time).

"Housing Information" means the information which the Housing Partner makes available to HCLL as part of the Housing Partner's provision of the Housing Information Services;

"Housing Information Services" means the services to be provided by the Housing Partner to HCLL and which are more particularly described in Schedule 2;

"Insolvency Event" in respect of a party, means:

- (a) that 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;

- (b) that 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;
- (c) 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 party;
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over that party;
- (e) the holder of a qualifying floating charge over the assets of that party has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the assets of the party or a receiver is appointed over the assets of the party;
- (g) a creditor or encumbrancer of the party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the party's assets and such attachment or process is not discharged within 10 Business Days;
- (h) any event occurs, or proceeding is taken, with respect to the party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (g) above (inclusive);

"Intellectual Property Rights" means intellectual property rights wherever in the world arising, whether registered or unregistered, including without limitation all patent rights, copyright, any know-how, intellectual property materials, trade secrets, business names and domain names, Marks, patents, petty patents, utility models, design rights, semi-conductor topography rights, database rights and all rights in the nature of unfair competition rights or rights to sue for passing off, and any other proprietary rights relating to any of these intellectual property rights;

"ITT" means the invitation to tender reproduced at Schedule 1.

"Marks" means any and all trademarks, trade names, service marks, trade dress, logos, URLs or identifying slogans, whether or not registered;

"Materials" means the content (including, in the case of the Housing Partner, the Housing Information) provided by either party from time to time for incorporation in the Web-site;

"Relevant Employees" means all those employees subject to a Relevant Transfer on a Relevant Transfer Date;

"Relevant Legislation" means any UK or EU legislation relevant to the provision of the Services or the Housing Information Services;

"Relevant Transfer Date" means a date on which the provision of the Services changes;

"Relevant Transfer" means a transfer to which the Transfer Regulations apply;

“Request for Information” means a request made to the Housing Partner or HCLL under the FOIA or EIR;

“Services” means the ICT services provided in connection with a choice based lettings service as more particularly set out and described in the ITT, the Tender and the Clarifications;

“Services Commencement Date” means [xxxx] 201[X];

“Software” means the Housing Needs software used by HCLL in the operation of the Web-site;

["Source Code Materials"] means the source code specifically developed by HCLL in connection with the provision of the Services to the Housing Partner;]

“Term” has the meaning given in Clause 2.1;

“Tender” means the Service definition document and scoping documents reproduced at Schedule 3;

“Transfer Regulations” the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended from time to time); and

“Web-site” means the websites delivered by Home Connections

1.2 In this Agreement (except where the context otherwise requires):

1.2.1 any reference to a Clause or a Schedule is to the relevant Clause or Schedule of this Agreement;

- 1.2.2 any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- 1.2.3 the Clause headings are included for convenience only and shall not affect the interpretation of this Agreement;
- 1.2.4 use of the singular includes the plural and vice versa;
- 1.2.5 use of any gender includes the other genders;
- 1.2.6 words defined for the purposes of the Companies Act 2006 (as amended from time to time) shall where the context so admits bear the same meaning in this Agreement;
- 1.2.7 references to any statutory provision includes any statutory provision which amends or replaces it, and any subordinate legislation made under it.

2 **TERM AND GOOD FAITH**

- 2.1 Subject to Clause 15 below, HCLL will deliver the Services to the Housing Partner for a period of [*Insert number*] years from and including the Services Commencement Date (the "**Term**"). The Housing Partner may extend the Term for a period of [insert number of years] by written notice to HCLL, provided that such written notice must be received by HCLL not less than 6 months prior to expiry of the initial Term.
- 2.2 During the Term the parties will act in good faith towards one another.

3 HOUSING INFORMATION SERVICES

- 3.1 The Housing Partner will during the Term provide the Housing Information Services to HCLL and will provide to HCLL such other information as HCLL may reasonably request to enable the provision of the Services.
- 3.2 The Housing Partner will ensure that the Housing Information Services are provided in a timely manner, will ensure that it obtains and maintains all necessary licences and consents required to provide the Housing Information Services and will ensure that the Housing Information provided is accurate in all material respects.
- 3.3 Notwithstanding any other provision of this Agreement, if HCLL's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Housing Partner, its agents, subcontractors, consultants or employees, HCLL shall not be liable for any costs, charges or losses sustained or incurred by the Housing Partner that arise directly or indirectly from such prevention or delay.

4 FEES

- 4.1 During the Term, the Housing Partner will pay HCLL the Fees as set out in Schedule 5.
- 4.2 HCLL shall, at the frequency provided for in Schedule 5, submit to the Housing Partner an invoice in respect of the Fees then payable.
- 4.3 VAT, as applicable, will be added to HCLL's invoices at the appropriate rate.
- 4.4 The Housing Partner shall pay each invoice issued to it by HCLL within 10 Business Days of receipt (or within such other time period as specified in Schedule 5 (if any)).
- 4.5 If any invoice is disputed by the Housing Partner, the Housing Partner shall promptly notify HCLL in writing. Such notification shall state the reason for the

dispute. The Housing Partner shall pay the portion of the invoice not in dispute. Any dispute over an invoiced amount which is not resolved by the parties within 10 Business Days of written notification shall be resolved in accordance with Clause 20 (DISPUTE RESOLUTION).

4.6 For the avoidance of any doubt, the Housing Partner shall not have any right of set-off (however so arising) in respect of any claim and all sums payable under this Agreement shall be paid in full without set-off, counterclaim or other deduction.

4.7 Without prejudice to any other right or remedy that it may have, if the Housing Partner fails to pay HCLL any amount on the due date for payment of such amount, the Housing Partner shall pay interest on the overdue amount at the rate of 2% per annum above Barclays Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Housing Partner shall pay the interest together with the overdue amount.

4.8 All sums payable to HCLL under this Agreement shall become immediately due on its termination, despite the terms of any other provision of this Agreement. This Clause is without prejudice to any right to claim for interest under the law or any such right under this Agreement.

5 INTELLECTUAL PROPERTY RIGHTS

5.1 Subject to Clauses 5.2 and 5.3 below, HCLL grants to the Housing Partner (or undertakes to procure the grant to the Housing Partner) of a perpetual, non-exclusive licence commencing on the Services Commencement Date to use the Software and to distribute the Housing Information on the Web-site in accordance with this Agreement.

- 5.2 The Housing Partner acknowledges that, where HCLL does not own the Software, the Housing Partner's use of rights in the Software is conditional on HCLL obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle HCLL to license such rights to the Housing Partner.
- 5.3 For the purposes of Clause 5.1 "use" of the Software shall be restricted to the use of the Software in object code form for the purpose of providing the Housing Information Services only. The licence granted by HCLL to the Housing Partner at Clause 5.1 shall terminate automatically without notice upon termination or expiry of this Agreement for any reason.
- 5.4 The parties agree that Intellectual Property Rights will be owned as follows:
- 5.4.1 all Intellectual Property Rights in the Housing Information provided by the Housing Partner, and all Intellectual Property Rights in any information, data or thing (including without limitation any Mark of the Housing Partner) which belongs to the Housing Partner on the Services Commencement Date and which is used by the Housing Partner in the provision of the Housing Information Services shall belong to the Housing Partner. This will include symbols and processes which are defined by the Housing Partner's policy and practice; and
- 5.4.2 all Intellectual Property Rights used in the provision of the Services (excluding any Intellectual Property Right referred to at Clauses 5.4.1 and 5.8) (including without limitation all Intellectual Property Rights in the Software and the Web-site or any Mark) whether created before or after the Services Commencement Date shall belong to HCLL.

- 5.5 Subject to Clauses 5.6 and 5.7 below, each party undertakes to defend the other from and against any claim or action that the possession, use, development, modification or maintenance by the first party of the other party's Intellectual Property Rights, in accordance with the terms of this Agreement, infringes the Intellectual Property Rights of a third party (an "**Infringement Claim**"). The first party shall fully indemnify and hold harmless the other party from and against any losses, damages, costs (including all legal fees) and expenses reasonably incurred by or against the other party as a result of or in connection with any such Infringement Claim.
- 5.6 Each party undertakes to notify the other party in writing as soon as reasonably practicable of any Infringement Claim.
- 5.7 A party shall not make any admission as to liability or compromise or agree to any settlement of any Infringement Claim without the prior written consent of the first party which consent shall not be unreasonably withheld or delayed; and the first party shall, on its written request and at its own expense be entitled to have the conduct of or settle all negotiations and litigation arising from any Infringement Claim and the other party shall, at the first party's request and expense, use reasonable endeavours to assist the first party in connection with those negotiations and such litigation.
- 5.8 Subject to any pre-existing rights of third parties and of HCLL, the Intellectual Property Rights in all reports, documents and other materials which are generated by HCLL (or any of its sub-contractors or agents) in the performance of the Services and relate specifically and exclusively to the Services provided to the Housing Partner shall belong to and be vested automatically in the Housing Partner. HCLL hereby assigns any copyright that it owns in every such report, document or other material to the Housing Partner.

6 **WARRANTIES**

6.1 HCLL warrants to the Housing Partner that the Services will be performed:

- 6.1.1 in such a way as not to cause any fault or malfunction in the Web-site;
- 6.1.2 in such a way as not to cause any interruptions to the business process of the Housing Partner (other than any agreed and unavoidable interruption which is required in order to perform the Services in a proper and efficient manner);
- 6.1.3 so that the materials utilised by HCLL (including without limitation the Software and any other deliverables provided to the Housing Partner by HCLL) in the course of providing the Services will not infringe the Intellectual Property Rights of any third party; and
- 6.1.4 such that at the date hereof HCLL has obtained and will maintain for the Term all permissions, licences and consents necessary for HCLL to perform the Services.

6.2 The Housing Partner warrants to HCLL that the Housing Information Services will be performed:-

- 6.2.1 in such a way as not to cause any fault or malfunction in the Web-site;
- 6.2.2 in such a way as not to cause any interruptions to the business process of HCLL (other than any agreed and unavoidable interruption which is required in order to perform the Housing Information Services in a proper and efficient manner); and
- 6.2.3 so that the materials utilised by the Housing Partner (including without limitation the Housing Information) in the course of providing the

Housing Information Services will not infringe the Intellectual Property Rights of any third party.

6.3 Each party warrants to the other that it will use reasonable skill and care in its performance of its obligations under this Agreement and shall use personnel of appropriate skill and experience.

6.4 Each party warrants, in respect of the Materials it provides, to the other party that such Materials:

6.4.1 do not violate any law, statute, orders or regulation;

6.4.2 are not defamatory, trade libellous, unlawfully threatening or unlawfully harassing;

6.4.3 are not obscene or pornographic and do not contain child pornography;

6.4.4 do not violate any laws regarding unfair competition, anti-discrimination or force advertising; and

6.4.5 do not contain any viruses, trojan horses, worms, time bombs, cancel bots or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or ex-appropriate any system, data or personal information.

7 CONFIDENTIALITY

7.1 The parties agree and acknowledge that in the performance of their obligations under this Agreement, Confidential Information will be disclosed to the other party.

7.2 Each party shall protect the Confidential Information of the other party against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.

- 7.3 Confidential Information may be disclosed by the receiving party to its employees, affiliates and professional advisers, provided that the recipient is made aware of the confidential nature of the Confidential Information and the receiving party procures that the recipient complies with the obligations of this Clause 7.
- 7.4 The obligations set out in this Clause shall not apply to Confidential Information that the receiving party can demonstrate:
- 7.4.1 is or has become publicly known other than through breach of this Clause; or
 - 7.4.2 was in the possession of the receiving party prior to disclosure by the other party; or
 - 7.4.3 was received by the receiving party prior to the disclosure by the other party; or
 - 7.4.4 was required to be disclosed by law, regulation or a governmental authority.
- 7.5 This clause is subject to the provisions of Clause 16 relating to Data Protection.

8 **[Software Escrow**

Upon the occurrence of an Insolvency Event in respect of HCLL or upon HCLL becoming aware of the likely occurrence of an Insolvency Event, the parties shall use reasonable endeavours to execute the Escrow Agreement and place the Source Code Materials into escrow.] **[Note: Optional Clause: only to be included if you wish to offer a software escrow]**

9 **THE HOUSING PARTNER'S REMEDIES**

- 9.1 If HCLL:
- 9.1.1 fails to perform the Services by the date set out in the Tender; or

9.1.2 is in material breach of this Agreement,

the Housing Partner may exercise any of the following rights:

9.1.3 to refuse to accept any subsequent performance of the Services which HCLL attempts to make;

9.1.4 to refuse to accept any delivery of deliverables which HCLL attempts to make;

9.1.5 to reject any deliverables (in whole or in part) whether or not title has passed and to return them to HCLL at HCLL's own risk and expense;

9.1.6 to recover from HCLL any costs reasonably incurred by the Housing Partner in having a third party provide substitute Services or in performing the Services itself;

9.1.7 where the Housing Partner has paid in advance for Services that have not been performed by HCLL, to have such sums refunded by HCLL promptly.

9.2 The rights set out in Clause 9.1 are cumulative and the exercise by the Housing Partner of any one of them shall not preclude it from exercising any other.

9.3 The Housing Partner's rights under this Clause 9 are in addition to its rights and remedies implied by statute and at common law.

10 **INSURANCE**

10.1 For the duration of this Agreement and for a period of one year thereafter, HCLL shall maintain in force, with a reputable insurance company, insurance to provide a level of cover sufficient for all risks which may be incurred by HCLL under this Agreement, including death or personal injury, or loss of or damage to property.

- 10.2 The insurance required under Condition 10.1 shall include as a minimum:
- 10.2.1 employer's liability insurance with a limit of indemnity of not less than five million pounds (£5,000,000) per claim; and
 - 10.2.2 public liability insurance with a limit of indemnity of not less than five million pounds (£5,000,000) per claim.
- 10.3 HCLL shall, at the written request of the Housing Partner produce to the Housing Partner a valid certificate of insurance and such other written documentation as is necessary to demonstrate that it has complied with its obligations under this Clause 10.
- 10.4 The terms of any insurance or the amount of cover shall not relieve HCLL of any liabilities incurred in connection with this Agreement.
- 10.5 HCLL shall inform the Housing Partner in writing whenever there is any material change to the insurance referred to in this Clause 10 (including any material change in the scope or level of cover or the identity of the insurer).

11 **CORRUPTION**

- 11.1 Each party undertakes to:
- 11.1.1 comply with all applicable laws and regulations and codes relating to anti-bribery and anti-corruption including, but not limited to, the Bribery Act 2010;
 - 11.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom;
 - 11.1.3 comply with the other party's anti-corruption policies, as disclosed to it from time to time;

- 11.1.4 ensure that any of its representatives associated with the supply of the Services comply with this Clause 11; and
 - 11.1.5 promptly notify the other party if a foreign public official becomes an officer or employee of it or acquires a direct or indirect interest in it.
- 11.2 For the purposes of this Clause, the meaning of "foreign public official" and whether a person is "associated" with another person shall be determined in accordance with sections 6(2), 6(5), 6(6) and 8 of the Bribery Act 2010.
- 11.3 Each party (the **First Party**) shall be entitled to terminate the Agreement forthwith and to recover from the other party (the **Second Party**) the amount of any loss resulting from such termination if the Second Party or a representative of it:
 - 11.3.1 offers or agrees to give any person working for or engaged by the First Party or any Public Body any favour, gift or other consideration, which could act as an inducement or a reward for any act or failure to act connected to the Agreement, or any other agreement between the Second Party and First Party or any Public Body;
 - 11.3.2 has entered into the Agreement and has knowledge that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the First Party or any Public Body by or the Second Party, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the First Party before the Agreement is entered into;
 - 11.3.3 breaches the undertaking set out in Clause 11.1; or
 - 11.3.4 gives any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.
- 11.4 For the purposes of Clause 11, "loss" shall include, but shall not be limited to:

11.4.1 the First Party's costs (which are reasonably incurred); and

11.4.2 direct losses.

12 MONITORING

12.1 Each party shall appoint a project manager to be responsible for the performance of that party's obligations under this Agreement during the implementation phase of the Services. The project manager will act in good faith at all times to enable the proper performance by the parties of their obligations under this Agreement.

12.2 HCLL shall appoint an account manager and the Housing Partner shall appoint a point of contact to be responsible for the performance of their obligations under this Agreement following the implementation phase of the Services. The account manager and point of contact will act in good faith at all times to enable the proper performance by the parties of their obligations.

12.3 The Housing Partner may participate in a user group set up for other housing partners who use the Web-site in a manner similar to the Housing Partner. The purpose of the user group will be to act in good faith and use reasonable endeavours at all times to work together to suggest, agree and implement changes and new developments.

12.4 The Housing Partner may monitor the provision by HCLL of the Services at regular intervals. HCLL shall use reasonable endeavours to co-operate with the Housing Partner by providing such information and documentation as the Housing Partner may reasonably require.

13 LIMITATION OF LIABILITY

13.1 Nothing in this Agreement shall operate to exclude or limit either party's liability for:

13.1.1 death or personal injury caused by its negligence; or

13.1.2 fraud; or

13.1.3 any other liability which cannot be excluded or limited under applicable law.

13.2 Neither party shall be liable to the other for any loss of profit, anticipated profits, revenues, anticipated savings, goodwill or business opportunity, or for any indirect or consequential loss or damage suffered by the other party unless expressly stated to the contrary in this Agreement.

13.3 Subject to Clause 13.1, HCLL's total liability to the Housing Partner, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement shall be limited to, in respect of all claims (connected or unconnected) in any consecutive 12 month period, the equivalent of the total Fees paid by the Housing Partner to HCLL in that period.

13.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Agreement.

13.5 Neither party shall be entitled to recover damages or any other payment more than once in respect of the same loss, shortfall, damage, deficiency, breach or other event or circumstance.

13.6 Nothing in this Agreement shall be deemed to relieve a party from its duty to mitigate any loss, shortfall, damage, deficiency or other event or circumstance.

13.7 In respect of any loss, shortfall, damage, deficiency, breach or other event or circumstance, if the affected party is entitled to claim under any insurance policy, then the affected party will not make a claim against the other party until the affected party has made a claim against its insurers and used reasonable endeavours to pursue such a claim and such claim has been settled or rejected by the insurer,

13.8 If the Housing Partner has, either prior to or after the date of this Agreement, consented to "Google AdWords", third party hyperlinks or pop-ups or any other third party advertisements (together "**Third Party Information**") being displayed on the Web-site, HCLL shall have no liability in relation to any claims, loss, shortfall, damage, deficiency or breach suffered or incurred by the Housing Partner which arises in connection with or as a result of such Third Party information.

14 **MATERIALS**

14.1 Each party shall ensure that Materials provided by that party do not infringe any applicable laws, regulations or third party rights (including without limitation material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, menacing or blasphemous).

14.2 HCLL has no obligation to the Housing Partner, and undertakes no responsibility, to review the Materials (including user-generated content) provided by the Housing Partner as part of the Housing Information Services to determine whether any such Materials may result in any liability to any third party. The Housing Partner acknowledges that HCLL has no control over any content placed on the Web-site by third parties, including visitors to the Web-site, and does not purport to monitor the content of the Web-site.

14.3 Notwithstanding anything to the contrary contained in this Agreement, if HCLL reasonably believes that any Materials provided by the Housing Partner may create liability (or prejudicially affect the reputation of the Web-site) for HCLL, HCLL may remove such Materials as HCLL believes in its sole discretion, is prudent or necessary to minimise or eliminate HCLL's potential liability or any prejudicial effect on the Web-site.

15 **TERMINATION**

15.1 Without prejudice to any other rights and remedies of the parties, either party may terminate this Agreement upon giving the other party at least one year's notice in writing at any time and for any reason.

15.2 HCLL may terminate this Agreement with immediate effect by giving written notice to the Housing Partner if the Housing Partner fails to pay any amount due under this Agreement on the due date for payment and remains in default 20 Business Days after being notified in writing to make such payment, PROVIDED THAT the reason for non-payment is not a dispute in relation to an invoiced amount, as allowed for by Clause 4.5.

15.3 Either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

15.3.1 the other party commits a material breach of any term of this Agreement, which either cannot be remedied or if capable of being remedied, is not remedied within 10 Business Days after being notified to do so;

15.3.2 the other party repeatedly breaches any 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; or

15.3.3 the other party suffers an Insolvency Event.

15.4 Upon termination or expiry of this Agreement:

- 15.4.1 the Housing Partner shall immediately pay to HCLL all of HCLL's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, HCLL may submit an invoice, which shall be payable immediately on receipt;
- 15.4.2 HCLL shall, within a reasonable time (and in any event within 15 Business Days), provide to the Housing Partner an electronic copy of all of the data or information pertaining to the Housing Partner that is then currently contained on the Web-site in connection with the provision of the Services;
- 15.4.3 HCLL shall cease to provide the Services and remove the Housing Partner's rights of access to the Web-site; and
- 15.4.4 the following Clauses shall continue in force: Clause 5 (INTELLECTUAL PROPERTY RIGHTS), Clause 7 (CONFIDENTIALITY), Clause 13 (LIMITATION OF LIABILITY), Clause 15 (TERMINATION), Clause 20 (DISPUTE RESOLUTION) and Clause 24.11.
- 15.5 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.
- 16 **DATA PROTECTION**
- 16.1 For the purposes of this Agreement the Housing Partner is the Data Controller and HCLL is the Data Processor of the personal data that is processed on behalf of the Housing Partner.
- 16.2 HCLL shall:

- 16.2.1 only process Personal Data provided to it by the Housing Partner in accordance with the instructions of the Housing Partner (subject to compliance with applicable law);
- 16.2.2 ensure that its sub-contractors comply with this Clause 16.2. HCLL shall be entirely responsible for the compliance of its sub-contractors with this Clause;
- 16.2.3 bring into effect and maintain (and shall ensure that all relevant sub-contractors have in effect and maintain) all reasonable technical and organisational measures necessary to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data;
- 16.2.4 ensure that any Personal Data it obtains and provides to the Housing Partner has been lawfully obtained and complies with the DPA and that the use thereof in accordance with this Agreement shall not breach any of the provisions of the DPA;
- 16.2.5 not disclose Personal Data to any third party other than to the extent required under a court order or to comply with any applicable laws; and
- 16.2.6 comply with any written request from the Housing Partner, for a written description of the technical and organisational methods employed by HCLL and the relevant sub-contractors to verify compliance with this Clause 16, provided that the Housing Partner

shall not make such a request more than once in a rolling 12 month period.

- 16.3 Within seven Business Days of receipt of a request under Clause 16.2.6, HCLL shall supply written particulars of all such measures as it is maintaining detailed to a reasonable level.
- 16.4 HCLL shall allow the Housing Partner upon reasonable written notice, to inspect HCLL's systems (during normal business hours on a Business Day) in order to satisfy itself that HCLL has appropriate measures in place to safeguard the Personal Data which is processed on the Housing Partner's behalf.
- 16.5 HCLL shall on termination of this Agreement for any reason, promptly cease all processing of the Personal Data and return to the Housing Partner in a format reasonably specified by the Housing Partner all Personal Data processed by it on the Housing Partner's behalf.
- 16.6 HCLL shall not transmit or process Personal Data outside the European Economic Area without the prior written consent of the Housing Partner and will comply with its obligations under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998.
- 16.7 HCLL shall:
- 16.7.1 notify the Housing Partner as soon as reasonably practicable if it becomes aware of any material breach of the technical and organisational measures put in place pursuant to Clause 16.2.
- 16.7.2 notify the Housing Partner within five Business Days if it receives:

- (a) a request from a Data Subject (as defined in the Data Protection Act 1998) to have access to that Data Subject's Personal Data; or
- (b) a complaint or request relating to the Housing Partner's obligations under Data Protection Law.

16.8 For the avoidance of doubt the terms "Data Controller", "Data Processor" and "Personal Data" have the same meaning as in the Data Protection Act 1998.

17 **FREEDOM OF INFORMATION**

17.1 HCLL acknowledges that the Housing Partner is subject to the requirements of FOIA and EIR and shall, at the Housing Partner's sole cost and expense, assist and co-operate with the Housing Partner to enable the Housing Partner to comply with its obligations under FOIA and EIR.

17.2 HCLL shall and shall procure that its representatives shall:

17.2.1 transfer any Request for Information to the Housing Partner as soon as practicable after receipt and in any event within two Business Days of receiving a Request for Information; and

17.2.2 provide such assistance as is reasonably requested by the Housing Partner to enable it to respond to a Request for Information within the time for compliance set out in section 10 of FOIA or regulation 5 of EIR.

17.3 The Housing Partner shall consult with HCLL prior to determining whether any information that is relevant to or belongs to HCLL and has been requested:

17.3.1 is exempt from disclosure in accordance with the provisions of FOIA or EIR;

17.3.2 is to be disclosed in response to a Request for Information, and in no event shall HCLL respond directly to a Request for Information unless expressly authorised to do so in writing by the Housing Partner.

17.4 HCLL acknowledges that the Housing Partner may be obliged under the FOIA or EIR to disclose Information following consultation with HCLL and having taken its views into account.

17.5 Where information is disclosed, the Housing Partner shall, in accordance with any recommendations issued under any code of practice issued under section 45 of FOIA, use reasonable endeavours, where appropriate, to give HCLL advanced notice, or failing that, to draw the disclosure to HCLL's attention as soon as practicable after any such disclosure.

18 **ASSIGNMENT**

Neither party may assign, transfer, charge, make subject of a trust or deal in any other manner with any of its rights under this Agreement, or purport to do any of the same, or sub-contract any or all of its obligations under this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld.

19 **FORCE MAJEURE**

19.1 Neither party shall be liable for delay in performing the obligations or for the failure to perform obligations if the delay or failure results from any cause beyond its reasonable control including without limitation acts of God, fire, explosion, war, terrorism, embargo, and any governmental action ("**Force Majeure Event**").

- 19.2 Either party may terminate this Agreement in the event that a Force Majeure Event has occurred and either party is prevented from performing or continuing to perform its obligations for a continuous period of more than four months.
- 19.3 Neither party may rely upon this Clause 19 and indeed may not be relieved of the performance of any of its obligations under this Agreement if a Force Majeure Event is proven reasonably by the other party to be caused by the deliberate, direct or indirect instigation of the party so intending to rely upon this Clause.
- 19.4 The party claiming a Force Majeure Event shall use reasonable endeavours to overcome any such cause of prevention or delay and to proceed with the performance of its obligations hereunder.
- 19.5 Notice of any Force Majeure Event and any abatement thereof shall forthwith be given to the other party by the party claiming the benefit of Clause 19.1.

20 **DISPUTE RESOLUTION**

It is the intention of the parties to settle amicably by negotiation all disputes and differences of opinion arising out of this Agreement. Accordingly, the parties agree, in relation to any matter of dispute between the parties in connection with this Agreement, that the parties will try to resolve the dispute through the Escalation Procedure. If the Escalation Procedure fails, any dispute arising out of this Agreement, shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration, which Rules are deemed to be incorporated by reference into this Clause. It is agreed that:

- 20.1 the tribunal shall consist of one arbitrator, who is to be a practising barrister;
and
- 20.2 the seat or legal place of arbitration shall be London.

21 **TRANSFER REGULATIONS**

21.1 The parties do not intend that the Transfer Regulations will apply on commencement, termination or expiry of this Agreement.

21.2 To the extent that the Transfer Regulations do apply on commencement, termination or expiry of this Agreement, the parties will comply with their respective obligations imposed by the Transfer Regulations and the parties acknowledge and agree that each party shall indemnify the other from and against all losses, costs, claims, demands, actions, fines, penalties awards, liabilities and expenses (including legal expenses on an indemnity basis) the other may suffer in connection with or as a result of act or omission of the indemnifying party in relation to a Relevant Employee.

22 **CHANGE CONTROL**

If any changes are proposed to the Agreement by either party, the party proposing such change shall notify the other party of the proposal in writing. HCLL shall then prepare a written report within five Business Days outlining the effects of the proposed Change on the Fees relating to the Services and provide this to the Housing Partner. The Housing Partner may then, in its absolute discretion, reject or accept the change within five Business Days and, if accepted, the parties agree to execute a written amendment to this Agreement specifying the change and amending the relevant provisions hereof. If the parties fail to agree any change then the change shall not take effect and the pre-existing provisions of this Agreement shall continue in force.

23 **Notices**

23.1 Any notice given under this Agreement:

23.1.1 shall be in writing;

23.1.2 shall be served by delivering it by hand or sending it by pre-paid recorded delivery or registered post or by fax at the address or fax number set out in Clause 23.2 of the party due to receive it and marked for the attention of the person named in Clause 23.2 (or at such other address or fax number or marked for the attention of such other person as last notified in writing to the other party;

23.1.3 shall be deemed to have been received:

- (a) if delivered by hand, at the time of actual delivery;
- (b) in the case of pre-paid recorded delivery or registered post, two Business Days after the date of posting;
- (c) in the case of fax, at the time of transmission.

23.2 The addresses and fax numbers of the parties for the purposes of Clause 23.1 are:

23.2.1 HCLL

Address: United House, North Road, Islington, London N7 9DP

For the attention of:

Fax number:

23.2.2 The Housing Partner

Address:

For the attention of:

Fax number:

23.3 To prove delivery it shall be sufficient to prove that the envelope containing the notice was addressed to the address of the relevant party set out in Clause 23.2 (or as otherwise notified in writing by that party under Clause 23.2) and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery, registered post, or that the notice was transmitted by fax to the fax number of the relevant party set out in Clause 23.2 (or as otherwise notified in writing by that party under Clause 23.2).

23.4 In this Clause if deemed receipt occurs before 9am on a Business Day the notice shall be deemed to have been received at 9am on that Business Day, and if deemed receipt occurs after 5pm on a Business Day, or on a day which is not a Business Day, the notice shall be deemed to have been received at 9am on the next Business Day.

23.5 A notice given under this Agreement shall not be validly served if sent by e-mail.

24 **GENERAL**

24.1 Each party shall pay its own costs relating to or in connection with the negotiation, preparation and execution of this Agreement.

24.2 No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.

24.3 No delay, indulgence or omission in exercising any right, power or remedy provided by this Agreement or by law shall operate to impair or be construed as a waiver of such right, power or remedy or of any other right, power or remedy.

24.4 No single or partial exercise or non-exercise of any right, power or remedy provided by this Agreement or by law shall preclude any other or further exercise of such right, power or remedy or of any other right, power or remedy.

- 24.5 This Agreement and any agreements and documents executed pursuant to this Agreement shall be binding upon and inure for the benefit of the successors or permitted assigns of the parties.
- 24.6 This Agreement constitutes the entire agreement between the parties and supersedes any previous agreement or arrangement between the parties relating to the subject matter of this Agreement.
- 24.7 In the event of any inconsistency between the terms of this Agreement (excluding the Schedules) and the ITT, Tender or Clarifications, the terms of this Agreement shall prevail.
- 24.8 This Agreement is not intended to nor shall it create any rights, entitlements, claims or benefits enforceable by any person that is not a party to it. Accordingly, no person shall derive any benefit or have any right, entitlement or claim in relation to this Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 24.9 This Agreement shall not create, nor shall it in any circumstances be taken as having created, a partnership between the Housing Partner and HCLL.
- 24.10 This Agreement may be executed in any number of counterparts, but shall not take effect until each party has executed at least one counterpart. Each counterpart shall constitute an original but all the counterparts together shall constitute a single agreement.
- 24.11 This Agreement shall be governed by, and construed in accordance with, the laws of England and Wales.

IN WITNESS of the foregoing the parties have caused this Agreement to be duly executed on the date first mentioned above.

SIGNED on behalf of

HOME CONNECTIONS LETTINGS LIMITED

by a Director:-

and Director/Secretary:-

SIGNED on behalf of

[insert organisation name]

by a duly authorised representative:-

SIGNED on behalf of

[insert additional organisation name/s if partnership of organisations are involved]

by a duly authorised representative:-

SCHEDULE 1 – THE INVITATION TO TENDER

SCHEDULE 2 – HOUSING INFORMATION SERVICES

This schedule details the manner in which a Housing Partner:-

- provides Housing Information Services on the Web-site;
- operates its designated portal.

Specific obligations upon the Housing Partner will include:-

- the extraction of data from its housing management system on a regular basis by automated routine;
- converting the extracted data to XML in compliance with the HCLL XML schema, (such schema in the form as provided by HCLL to the Housing Partner and as may be amended from time to time); as above
- file transfer of the XML data extract file to HCLL using file transfer protocol; as above
- give due warning to HCLL of any data or data transfer problems as above
- make all reasonable effort to deal with data or data transfer problems as above
- respond to enquiries and warnings from Home Connections staff around provision of the service
- respond to end-user queries and investigate end-user problems according to the problem shooting documentation provided before referring queries onto Home Connections
- checking that the data is on the Web-site and is correct;
- correcting any data problems.

**SCHEDULE 3 – THE SERVICE DEFINITION AND SCOPING OR SPECIFICATION
DOCUMENTS**

SCHEDULE 4 – ESCALATION PROCEDURE

Home Connections Escalation Procedure

Title	Reason
Help Desk	First point of contact to raise issue
Help Desk Manager	Non-conformity with contractual commitments
Operations Director	No satisfactory response within 48 hours of issue being raised
Home Connections Chief Executive – Ninesh Muthiah	No satisfactory response within 48 hours of referral of issue to Operations Director
Home Connections Chair of Board of Directors – Karen Lucas	No satisfactory response within 48 hours of referral of issue to Chief Executive

Schedule 5 – Fees based on G-Cloud Pricing Document

Schedule 6 – Members' Agreement Accession Agreement