

Terms of Service

Recitals:

- (A) The Licensor is entitled to provide a licence to access the App;
- (B) The Licensee wishes to use the App and the Works for the Purpose;
- (C) The Licensor wishes to provide a licence for the Licensee to access the App and the Works.

Operative provisions:

1. Definitions

- 1.1. In this Licence the following expressions shall have the following meanings unless the context otherwise requires:

'App' means each iteration or version of The Housing App software made available for the Licensee for downloading through the App Store, Google Play, Apps for Windows etc and other such locations through which the Licensor may choose to make the App available, and as prepared for the Licensee to use within its geographic territory or across its client, customer or User base for the Purpose

'Commencement Date' means the day on which the App is made accessible to the Licensee by the Licensor

'Data Protection Legislation' means the Data Protection Act 2018, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Privacy and Electronic Communications (EC Directive) Regulations 2003, the UK GDPR and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner

'Data Subject' shall have the same meaning as set out in the Data Protection Act 2018 and the UK GDPR

'Developments' means any modification, improvement or amendment to the App or the Works or the Website devised or developed by the Licensor for the Licensee or as required due to any change of legislation either before or during the term of the Licence

'Intellectual Property' means all industrial and intellectual property rights relating to the App, the Works and the Website, whether registered or unregistered, including without limitation patents, trademarks and service marks whether registered or unregistered, registered designs, unregistered designs, database rights and copyrights and any applications for any of the foregoing in any part of the world, and the copyright in all drawings, plans, specifications, designs and computer software including the App, the Works and the Website, and all know-how and confidential information and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world

'Licence Fee' means the fees as set out in the information sent to the Licensee by the Licensor and any subsequent proposals and communications sent by the Licensor to the Licensee during the term

'Password' means the password to be issued by the Licensor to the Licensee to enable the Licensee to access the Website and audio file database and any related information about the Website, the App and the Works

'Personal Data' shall have the same meaning as set out in the Data Protection Act 2018 and the UK GDPR

'Purpose' means to provide the Licensee with access to the App, the Works and the Website on the terms of this Licence for use only within its local area of jurisdiction or operations for its Users, as has been agreed in advance in writing with the Licensor, for inspecting, surveying, investigating, recording and reporting building and housing conditions and to support the servicing of requests, complaints, informal and formal actions including informal, advisory, legal or enforcement actions in relation to

housing and any related activities, and to provide the Licensee and its authorised Users with access to the Works to review and manage case information and related data

‘UK GDPR’ means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018

‘Users’ means persons employed by or invited by the Licensee to use the App, the Works or the Website for the Purpose

‘Website’ means the website www.thehousingapp.com and any other website utilised by the Licensor through which the Licensee can access the Works

‘Works’ means the App software, database software and any other related software provided by the Licensor and any supporting information prepared by the Licensor and to which the Licensee has access via the App or Website.

2. Licence

2.1 In consideration of the Licence Fee payable as described in Clause 9, the Licensor hereby grants to the Licensee a non-exclusive licence to access the App, the Website and the Works and make them available to download for the Purpose and the Licensor undertakes to issue the Password to the Licensee.

2.2 The Licence for the Works shall include the Developments (if any).

2.3 The use by the Licensee and its Users of the App and the Works shall be restricted solely to the Purpose and the Licensee warrants and represents that the App, the Website and the Works shall not be used or otherwise reproduced in any form for any other purpose whatsoever.

2.4 The Licensee agrees that it will not hold the Licensor liable for any misuse or claims arising from any misuse of the App or the Works. The Licensee will indemnify the Licensor for any liability that it may incur resulting from misuse of the App and the Works, in particular any claims or liabilities arising under or as a result of the Human Rights Act 1998, the Data Protection Act 2018, the Freedom of Information Act 2000, the Privacy and Electronic Communications Regulations 2003, and any other related or similar legislation or provisions where such a claim or liability is attributable to the misuse or negligence of the Licensee, its customers or Users. This clause does not limit or exclude liability of the Licensor for fraud or fraudulent misrepresentation; death or personal injury caused by its negligence; breach of any obligation as to title implied by statute; or any other act or omission, liability for which may not be limited to any applicable law. This clause does not limit or exclude liability of the Licensor for any claims under the Data Protection Act 2018 arising as a result of any use of the App or the Works in a manner which has been specifically recommended by the Licensor.

2.5 The Licensor shall be the owner of all Intellectual Property in the App, the Works, the Website, in any Developments which it may create, and in all data collected by means of the App and the Website.

3. Technical Support

3.1 With effect from the Commencement Date and for the Term the Licensor shall provide the Licensee free of charge with the technical support described in this Clause 3.1. The technical support will be limited to giving advice on how to access the App, the Works and the Website, which will be given by telephone or email only. In the event that technical support is required the Licensor should be contacted by email at support@rheglobal.com.

3.2 The Licensor shall not be liable for any loss or damage whatsoever suffered by the Licensee as a result of the Licensee being unable to access the App, the Website and the Works at any time for whatever reason.

4. Duration

4.1 As per G Cloud agreement.

5. Restrictions on Licensee

- 5.1 The Licensee shall not:
 - 5.1.1 make any modifications to the App, the Works or the Website; or
 - 5.1.2 reproduce the App, the Works or the Website in any way which might prejudice their distinctiveness or the goodwill or reputation of the Licensor therein; or
 - 5.1.3 use in relation to the App, the Works or the Website any trademarks or other marks or descriptions other than as may be contained within the App, the Works or the Website without obtaining the prior written consent of the Licensor; or
 - 5.1.4 sell or share the App, the Works or the Website to or with any other third party save to the extent expressly permitted herein.
- 5.2 The Licensee shall keep confidential the Password and shall not disclose or supply other persons or organisations with the Password.
- 5.3 Except as provided in this Licence the Licensee shall have no rights in respect of any trade names or trademarks used by the Licensor in relation to the App, the Works or the Website or of the goodwill associated therewith and the Licensee hereby acknowledges that except as expressly provided in this Licence it shall not acquire any rights in respect thereof and that all such rights and goodwill are and shall remain vested in the Licensor.
- 5.4 The Licensee shall at the expense of the Licensor take all such steps as the Licensor may reasonably require to assist the Licensor in maintaining the validity and enforceability of the Intellectual Property of the Licensor in the Works during the term of this Licence.
- 5.5 Without prejudice to the right of the Licensee or any third party to challenge the validity of any Intellectual Property of the Licensor, the Licensee shall not do or authorise any third party to do any act which would or might invalidate or be inconsistent with any Intellectual Property of the Licensor and shall not permit or authorise any third party to do any act which would have that effect or character.
- 5.6 The Licensee shall promptly and fully notify the Licensor of any actual, threatened or suspected infringement of any Intellectual Property of the Licensor which comes to the Licensee's notice and of any claim by any third party so coming to its notice that the reproduction of the Works infringes any rights of any other person and the Licensee shall at the request and expense of the Licensor do all such things as may be reasonably required to assist the Licensor in taking or resisting any proceedings in relation to any such infringement or claim.
- 5.7 The Licensee shall notify the Licensor of any amendments or corrections required to be made to the App, the Website or the Works which may be identified by the Licensee.
- 5.8 The App, the Website and the Works must be used in accordance with the Terms of Service displayed on the Website and the End User Licence Agreement displayed when Users first access the App.
- 5.9 The Licensee warrants and agrees that it will have in place an appropriate document retention policy, and that all information obtained by the Licensee shall be collected, processed, retained and destroyed in accordance with the terms of that policy.

6. Warranties and Indemnity

- 6.1 The Licensor warrants that it is the owner of the world-wide rights to reproduce the copyright in the App, the Website and the Works, and that to the best of its knowledge the use of the App, the Works and the Website as permitted hereunder will not infringe the rights of any third parties.
- 6.2 The Licensee shall indemnify the Licensor against all claims, liabilities and expenses arising out of:
 - 6.2.1 the Licensee's activities under this Licence;
 - 6.2.2 any infringement of any rights of the Licensor or of any third party by the supply, distribution or use of the App, the Works or the Website by the Licensee; or
 - 6.2.3 the Licensee's failure to comply with all applicable laws and regulations.

7. Moral Rights

- 7.1 The Licensor warrants that the right to be identified as an author as defined in section 77 of the Copyright, Designs and Patents Act 1988 has not to the Licensor's knowledge

been asserted by any person in relation to the App, the Website or the Works and that the Licensor is not aware of any other assertion of that right made by an instrument in writing by any person.

8. Infringements

- 8.1 The Licensor shall use reasonable endeavours to restrain infringements by third parties of the copyright in the Works which might, if not restrained, damage the ability of the Licensee to exploit its rights hereunder.

9. Licence Fee

- 9.1 The Licence Fee shall include the cost of any Developments.

- 9.2 The Licensee shall pay the Licence Fee to the Licensor on the Commencement Date and upon every subsequent annual anniversary of the Commencement Date, until such time as the Licence terminates or expires. If the Licensee wishes to terminate the Licence it must give notice to the Licensor in writing not less than 30 days prior to each anniversary of the Commencement Date. Failure to give notice in accordance with the terms herein will render the Licensee liable for the Licence Fee until the notice is correctly given.

- 9.3 In the event of additional services being added to the App, the Works or the Website at the request of the Licensee, the fee specified by the Licensor for that additional service shall be payable on the date on which the additional service is accessible by the Licensee and will be added to the Licence Fee on every subsequent annual anniversary of the Commencement Date.

- 9.4 The Licence Fee shall be payable (together with value added tax thereon) by the Licensee to the Licensor within 30 days of the date set out in clauses 9.2 and 9.3 above.

- 9.5 The Licensor reserves the right to charge the Licensee interest in respect of the late payment of any sum due under this Licence (as well after as before judgment) at the rate of four per cent (4%) per annum above the base rate from time to time of the Bank of England from the due date therefore until payment.

- 9.6 The Licensor shall be entitled to vary the Licence Fee not more than once in every successive period of 12 months during the Term upon giving not less than 30 days' notice thereof to the Licensee.

- 9.7 Notwithstanding the information set out in clause 9.3 relating to the fee payable for each additional service the Licensor shall be entitled to vary the cost of each additional service to be added to the App, the Works or the Website.

- 9.8 The Licensor shall be entitled to continue to charge the Licence Fee in the event that the Licensee merges or shares resources with another organisation and shall be entitled to review the Licence Fee payable by the Licensee on the occurrence of such an event.

10. Termination

- 10.1 As per G Cloud Agreement.

11. Liability

- 11.1 Save where expressly provided, all conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this Licence or any collateral contract, whether by statute, common law or otherwise, are hereby excluded to the maximum extent permitted by law.

- 11.2 Nothing in this Licence shall operate to exclude or limit the Licensor's liability for:

11.2.1 death or personal injury caused by its negligence;

11.2.2 any breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;

11.2.3 fraud; or

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

- 11.3 The Licensor shall have no liability for any losses or damages which may be suffered

by the Licensee (or any person claiming under or through the Licensee), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:

- 11.3.1 loss of use;
- 11.3.2 loss of profits;
- 11.3.3 loss of anticipated savings;
- 11.3.4 loss of business opportunity;
- 11.3.5 loss of contracts;
- 11.3.6 loss of goodwill; or
- 11.3.7 loss arising from damaged, corrupted or lost data.

- 11.4 Subject to clause 11.2, the Licensor's liability, whether in contract, tort (including negligence), or otherwise and whether in connection with this Licence or any collateral contract, shall not exceed £1,000,000.

12. Waiver

- 12.1 The waiver by either party of a breach or default of any of the provisions of this Licence by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

13. Bribery and Corruption

- 13.1 Either party shall be entitled to cancel this Licence and to recover from the other party (the "Defaulting Party") the amount of any loss or damage resulting from such cancellation to the extent of the Licence Fee paid in advance if:
 - 13.1.1 The Defaulting Party shall have offered or given or agreed to give to any person any gift or reward for doing or not doing any action in relation to this Licence or any other contract with the Licensee; or
 - 13.1.2 The like acts shall have been done by any person employed by the Defaulting Party, representing it or acting on its behalf; or
 - 13.1.3 In relation to any contract with the other party, the Defaulting Party or person employed by it or acting on its behalf shall commit any offence under the Bribery Act 2010 or give any reward receipt of which is an offence under Section 117 (2) of the Local Government Act 1972.

14. Notices

- 14.1 Any notice, request, instruction or other document to be given hereunder shall be delivered or sent by first class post to the address of the other party set out in this Licence (or such other address as may have been notified in writing from time to time) and any such notice or other document shall be deemed to have been served at the time of delivery (if delivered) or upon the expiration of 48 hours after posting (if sent by post).

15. Invalidity and severability

- 15.1 If any provision of this Licence shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this Licence and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt in good faith to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

16. Freedom of Information Act and Environmental Information Regulations

- 16.1 The Licensor will comply with requests made by the Licensee to enable the Licensee to provide lawful disclosure of information requested under the provisions of The Freedom of Information Act 2000 and the Environmental Information Regulations 2004. The Licensee will, in accordance with the provisions of the Freedom of Information Act 2000, allow public access to recorded information where appropriate and the Licensor shall agree to the Licensee making any disclosures in accordance with the Act subject to Clause 5 of this Licence.

17. Entire Agreement

- 17.1 The Licensor shall not be liable to the Licensee for loss arising from or in connection with any representations, agreements, statements or undertakings made prior to the date of execution of this Licence other than those representations, agreements, statements or undertakings confirmed by a duly authorised representative of the Licensor in writing or expressly incorporated or referred to in this Licence.

18. Data Protection

- 18.1 The parties will each comply with their respective duties under all relevant legislation concerning the protection of Personal Data, including without limitation the UK Data Protection Act 2018 and the UK GDPR.

- 18.2 If and to the extent that the Licensor is required to process Personal Data on behalf of the Licensee under this Licence, the Licensor will:

- (a) Process such Personal Data only to the extent strictly necessary for the purposes of performing its obligations under this Licence and (where applicable) in accordance with the written instructions of the Licensee;
- (b) Put and at all times maintain in place appropriate technical and organisational measures against unauthorised or unlawful processing of such Personal Data and against accidental loss, destruction of or damage to the data. Such measures shall (inter alia) have regard to the specific requirements of this Licence and the level of harm that may be suffered by a Data Subject whose Personal Data is affected by any such unauthorised or unlawful processing or by its loss, destruction or damage;
- (c) Not keep the Personal Data for longer than is necessary for the purposes of processing the Personal Data to perform its obligations under this Licence;
- (d) Take reasonable steps to ensure the reliability of any of its staff who will have access to the Personal Data, ensuring that any such staff are:
 - (i) Adequately trained in their duties;
 - (ii) Contractually obliged to maintain the confidentiality of the Licensee's Personal Data, and
 - (iii) Contractually obliged to process the Licensee's Personal Data only on the instructions of the Licensee;
- (e) Inform the Licensee without undue delay if it becomes aware of any accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure of or access to the Licensee's Personal Data and provide the Licensee with all reasonable assistance in investigating and mitigating the impact of any such data breach. The Licensor will also provide all reasonable assistance to the Licensee in relation to its obligations to provide adequate notifications to the relevant data protection authorities and affected Data Subjects;
- (f) Provide the Licensee with reasonable and timely assistance for the purposes of fulfilling the Licensee's obligations in the event that the Licensee receives from a Data Subject a request to exercise any of his/her rights under applicable data protection law. If the Licensor receives from a Data Subject a request to exercise his/her rights in respect of the Licensee's Personal Data, the Licensor will provide notice of this to the Licensee without undue delay;

- (g) Not without the written consent of the Licensee process any of the Licensee's Personal Data in a territory which lies outside the UK and the EEA, nor transfer any of the Licensee's Personal Data to such a territory;
- (h) Allow a representative of the Licensee access to any relevant premises owned or controlled by the Licensor upon reasonable notice, to inspect the measures, programmes and procedures adopted in performance of and in compliance with this clause 18. The Licensor will also make available to the Licensee, at the Licensee's request, all information necessary to demonstrate compliance with this clause 18;
- (i) Upon the termination of this Licence for whatever reason, return all Personal Data and all copies of the Personal Data to the Licensee forthwith or, at the Licensee's choice, destroy all copies of the same and certify to the Licensee that it has done so, unless the Licensor is prevented by any legal or regulatory requirement from destroying or returning all or part of such data, in which event the data will be kept confidential and will not be actively processed for any purpose;
- (j) Not subcontract any processing of the Licensee's Personal Data or otherwise disclose the Licensee's Personal Data to any third party except as expressly permitted by this Licence or otherwise permitted by the Licensee in writing. Where such a sub-contractor is engaged, the Licensor will:
 - (i) Ensure that it has a written contract (the "Processing Subcontract") in place with the relevant subcontractor which imposes on the subcontractor the same obligations in respect of processing of the Licensee's Personal Data as are imposed on the Licensor under this Licence, and in particular this clause 18;
 - (ii) Ensure that there are sufficient guarantees in place to ensure the subcontract will meet the requirements of Article 28 of the UK GDPR;
 - (iii) Remain fully liable to the Licensee for its obligations under this clause 18; and
 - (iv) Provide a copy of the Processing Subcontract to the Licensee upon request, subject to reasonable confidentiality restrictions that may be applicable. The Licensor shall ensure that any confidentiality restrictions in the Processing Subcontract do not prevent it showing to the Licensee those provisions which demonstrate Licensor's compliance with its obligations under this clause 18.

19. Data Retention

- 19.1 Personal Data will be held on the Website during the Term in accordance with the Licensee's data retention policies. The Licensor has provided the Licensee with the software features to manage and delete Personal Data in accordance with its data retention policies. If it is found necessary for the Licensee to request the Licensor to open the Licensee's account to retrieve or delete Personal Data, the Licensee will notify the Licensor in writing who will make arrangements for the retrieval or deletion of the Data. Arrangements made by the Licensor to retrieve or delete Personal Data and any other data identified by the Licensee, will be subject to the written agreement of the Licensor and in consideration of any additional fees necessary to fulfil specific technical or organisational requirements of the Licensee. If the Licensee does not renew the Licence, upon expiry of the Term Personal Data will be deleted.

20. Successors

- 20.1 This Licence shall be binding upon and enure for the benefit of the successors in title of the parties hereto.

21. Assignment and sublicensing

- 21.1 The Licensee shall not be entitled to assign or otherwise transfer this Licence nor any of its rights or obligations hereunder nor sublicense the use (in whole or in part) of the Works without the prior written consent of the Licensor which may be withheld at the Licensor's entire discretion.
- 21.2 The Licensor shall be entitled to assign or otherwise transfer this Licence or any of its rights or obligations hereunder.

22. Headings

- 22.1 Headings to clauses in this Licence are for the purpose of information and identification only and shall not be construed as forming part of this Licence.

23. Law

- 23.1 This Licence shall be governed by and construed in accordance with the laws of England and Wales and the parties hereto agree to submit to the non-exclusive jurisdiction of the courts of England and Wales.