



ONCE FOR ALL

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***SUBSCRIPTION AGREEMENT***

By ticking the box, you are accepting this Subscription Agreement (the “Agreement”) which governs the relationship between Once For All Limited (t/a Once For All and/or Constructionline and/or Facilitiesline) with company No. 11188766 and registered address at Midpoint, Alencon Link, Basingstoke, England, RG21 7PP (“Us”, “We”, “Our”) and You, in your capacity as a subscriber of these Services (“Supplier”, “You”). Please read this Agreement carefully as you will be bound but these terms. By continuing to access our SaaS Platform or use our Services you are deemed to have agreed to this Agreement.

## AGGREED TERMS

### 1. DEFINITIONS AND INTERPRETATION

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

<b>Agreement:</b>	means the Subscription Agreement between You and Us which governs our relationship for the provision of the Services.
<b>API</b>	an application programming interface service allowing Buyers to digitally extract Data from the SaaS Platform related to the Supplier in their current or prospective supply chain.
<b>Application Form</b>	the profile-builder form which prospective Suppliers are required to complete on the SaaS Platform to become a Supplier.
<b>Application Support Services:</b>	the service support desk which is available via phone, email and/or live chat during Normal Business Hours.
<b>Authorised Users:</b>	those employees, agents and independent contractors of the Supplier who are authorised by the Supplier to use the Services.
<b>Build UK RABs:</b>	any Common Assessment Standard recognised assessment bodies appointed by Build UK from time to time.
<b>Business Day:</b>	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
<b>Buyer</b>	means the organisations identified as Buyers in Our SaaS Platform (Our customers) who have access to the Data displayed by Suppliers in Our SaaS Platform.
<b>Confidential Information:</b>	information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information.
<b>Common Assessment Standard:</b>	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).
<b>Controller:</b>	has the meaning set out in Data Protection Legislation.
<b>Data:</b>	means collated data input by the Supplier on Our SaaS Platform which may be verified and maintained by Us and includes business data such as information about the directors (and officers) of the company, financial information and may also include Personal Data.
<b>Data Protection Legislation:</b>	the UK Data Protection Act 2018, the UK GDPR” ((means Regulation (EU) 2016/679 of the European Parliament...) 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), the PECR (means the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019). 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).
<b>Data Subject:</b>	has the meaning set out in the Data Protection Legislation.

<b>Fee(s)</b>	the fee(s) payable by the Supplier to Us in consideration for the Services and in accordance with the Subscription Plan selected by the Supplier, as indicated from time to time on the SaaS Platform, including without limitation any Renewal Fee.
<b>Group:</b>	in relation to a company, that company, any subsidiary or holding company of that company, and any subsidiary of that company.
<b>Implementation Services:</b>	the set-up of the Supplier on the SaaS Platform.
<b>Intended Purpose:</b>	the Suppliers' intended purpose of registering on the SaaS Platform is to share their Data on Our SaaS Platform to be: (i) accessed by Buyers to allow them to buy their services and build their supply chain; (ii) shared by Us with Build UK RABs for the purposes of the construction industry Common Assessment Standard; (iii) accessed by prospect suppliers; and (iv) shared for Marketing purposes.
<b>Subscription:</b>	the Supplier's subscription permitting them to make use of Our Services via the SaaS Platform, subject to the Subscription Plan they select at Registration.
<b>Subscription Bolt-Ons</b>	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 have a Subscription.
<b>Subscription Plan</b>	the plan of subscription (as applicable) which is described on the SaaS Platform, chosen by the Supplier during Registration which indicate to Us the Services plan the Supplier requires.
<b>Normal Business Hours:</b>	0900 to 1700 UK time, each Business Day.
<b>Personal Data:</b>	has the meaning set out in the Data Protection Legislation.
<b>Personal Data Breach:</b>	has the meaning set out in Article 4(12) of the GDPR.
<b>Privacy Notice:</b>	Our privacy notice, available at <a href="https://www.constructionline.co.uk/privacy-policy/">https://www.constructionline.co.uk/privacy-policy/</a> and/or as may be amended from time to time.
<b>Processor or Processing:</b>	has the meaning set out in the Data Protection Legislation.
<b>Registration</b>	the process Suppliers are required to complete to become a Supplier on the SaaS Platform in accordance with the registration requirements and applicable criteria detailed on the SaaS Platform, which may be amended and/or updated from time to time.
<b>Renewal Date:</b>	the anniversary of the Supplier's Registration Date.
<b>Renewal Fee</b>	the Fee payable annually for the renewal of the Supplier's Subscription in accordance with clause 2, as set out on the SaaS Platform from time to time and as invoiced to the Supplier by Us in advance of the Supplier's Subscription Renewal in accordance with clause 2.3.
<b>SaaS Platform:</b>	Our Software as a Service Platform which includes Our websites <a href="http://www.onceforall.com">www.onceforall.com</a> , <a href="http://www.constructionline.com">www.constructionline.com</a> and all other application websites provided by Us.
<b>Services:</b>	means the services that we provide to the Suppliers pursuant to section 3 below.
<b>Software Licence</b>	the Software licence granted to the Supplier by Us in accordance with clause 3.2.1 and the Terms of Use.
<b>Suppliers:</b>	the person(s), organisations and their Authorised Users that have successfully registered with the Us via the SaaS Platform for the Intended Purpose.
<b>Support Services:</b>	the services used to ensure the SaaS Platform is available for the Supplier's use and include hosting, monitoring, fault identification, rectification and Supplier support during Normal Business Hours.
<b>Term:</b>	has the meaning given in clause 2.

- Verification Services:** Our review and validation of Data submitted by the Suppliers (where this is included in the Subscription Plan selected by the Supplier and as updated from time to time to ensure conformance to standard requirements.
- 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 a 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. DEFINITIONS AND INTERPRETATION

- 2.1 This Agreement shall, unless otherwise terminated as provided in clause 14, 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 14 of this Agreement.
- 2.3 Unless it has been terminated or amended in accordance with this Agreement, the Supplier's Subscription (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 automatically be downgraded to a no cost Subscription Plan that does not include Verification Services.

### 3. SERVICES

- 3.1 The Services are provided as is to the Supplier for the Intended Purposes with Our SaaS Platform, websites, Application Support Services and Implementation Services, subject to the Subscription Plan selected by the Supplier (and any Subscription Bolt-Ons (if applicable)).
- 3.2 The Services described in this clause 3 are provided via the [www.onceforall.com](http://www.onceforall.com); [www.constructionline.com](http://www.constructionline.com) and/or any other website provided by Us and subject to the terms of this Agreement. The Services may vary or be updated from time to time and without notice.
- 3.3 To provide Our Services we may use other tools, services and application from third parties. These third-party companies are different from Us and by using their tools and applications, You will be governed by their terms and conditions, therefore we strongly recommend to carefully read them.
- 3.4 Subject to the Supplier purchasing a Subscription in accordance with clause 9.1 and the terms of this Agreement, 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 for the Intended Purpose.
- 3.5 The Supplier hereby grants Us a non-exclusive transferable licence to use the Data (where applicable) to provide the Services.
- 3.6 For the avoidance of doubt, the rights provided under this clause 3 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.
- 3.7 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.
- 3.8 The Supplier is fully liable for all Authorised Users and how they use the Services, the Supplier is fully responsible for providing access to Our SaaS Platform to its Authorised Users who must comply with this Agreement.
- 3.9 The Supplier agrees that it shall not and shall procure that its Authorised Users will not:
  - 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 Software (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 Software; or
  - access all or any part of the SaaS Platform to build a product or service which competes with the Services; or
  - use the SaaS Platform to provide services to third parties; or
  - license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software or data available to any third party except the Authorised Users;
  - attempt to obtain, or assist third parties in obtaining, access to the SaaS Platform, other than as provided under this Section; or
  - introduce or permit the introduction of any Virus into Once For All's network and information systems.

### 4. SUPPLIER'S OBLIGATIONS

- 4.1 The Supplier agrees, undertakes and warrants to:

- 4.1.1 provide Us with all necessary co-operation in relation to this Agreement and all necessary access to such information as may be required by Us to provide the Services, including but not limited to, Data, security access information and configuration services.
- 4.1.2 complete the Registration process (including the Application Form) via the SaaS Platform and as part of Registration, the Supplier will choose the Services they would like to purchase from Us;
- 4.1.3 have a separate Subscription for each company in the Supplier Group that wish to access the Services;
- 4.1.4 provide contact details of at least one employee as point of contact for all matters relating to the Services and this Agreement. the Supplier will not access the Services until their Application Form has been completed and authorised by Us;
- 4.1.5 pay Us the Fee at Registration, and the Supplier acknowledges that a refund will not be provided where We do not receive a completed Application Form as part of Registration and We are therefore unable to process the application for the Supplier to access the SaaS Platform and the Services;
- 4.1.6 use the SaaS Platform and make use of the Services in accordance with this Agreement;
- 4.1.7 provide and maintain accurate, complete, not misleading and Up-to-date Data at all times. Further, the Supplier's Data in the SaaS Platform shall not infringe any trademark, intellectual property and/or the right of another person and/or company or breach any data protection laws or confidentiality. The Supplier shall immediately inform Us in writing if the Data is not correct. We shall amend it the Data within 14 days of notification;
- 4.1.8 remain responsible for the acts of any third party engaged to assist the Supplier with its Registration, Application Form or Subscription 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 allow Us to make any necessary or desirable alteration to the Data displayed in the Platform for the purposes of providing the Services;
- 4.1.10 allow Us to display the Data contained in the Platform during product shows and demonstrations;
- 4.1.11 use the Service in accordance with the terms of this Agreement at all times;
- 4.1.12 indemnify Us for any claim, losses, liability, cost, expenses, royalty compensation and/or other amount which we may become liable to pay as a result of any false inaccurate, out of date or misleading Data information and/or Data provided by a Supplier and/or if the Data that infringes any trademark and/or any other intellectual property right.
- 4.1.13 comply with all applicable laws and regulations with respect to its activities under this Agreement;
- 4.1.14 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
- 4.1.15 ensure that the Authorised Users use the Services in accordance with this Agreement 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, subject to the provisions of cause 6 (Data).

- 5.2 We undertake that the Services will be performed with reasonable skill and care and that We comply with all applicable legislation and regulations.
- 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 you pr any party other than Us . If the Services do not conform with the foregoing undertaking, We will, at Our expense, use 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 warrant that We have and will maintain all necessary licences, and permissions necessary for the performance of Our obligations under this Agreement.
- 5.5 We do not warrant:
- 5.5.1 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
  - 5.5.2 and we 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.

## 6. DATA

- 6.1 During the Registration, We collect the Data from the Supplier and Authorised Users.
- 6.2 As part of Our Services, the Data is available to Buyers (it may be available to prospective Buyers) and Build UK RABs (together "They" or "Them"). They may access to the Data and in certain circumstances download it via API Services.
- 6.3 The Suppliers acknowledge and consent to publish their Data in the SaaS Platform allowing Them to see and/or extract the Data for the sole purposes of providing the Services to the Supplier and the Buyers.
- 6.4 We shall deny the access to the Services at any time if the Suppliers or its Authorised Users are in breach of this Agreement. If the Supplier does not remedy the beach within 7 days, we shall cancel the Services without liability for Us.
- 6.5 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.
- 6.6 The Supplier shall 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.
- 6.7 Unless the Supplier notifies Us otherwise, We will assume that the Data on the SaaS Platform is correct and up to date.
- 6.8 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.
- 6.9 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.
- 6.10 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 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.
- 7.3 During Registration, We will collect Personal Data from the Supplier as defined in the Privacy Notice, including without limitation information on your directors and other company officers. The Personal Data will be used to provide the Services in accordance with the Intended Purpose.
- 7.4 The Supplier warrants that it has the correct and lawful grounds and basis for providing to Us with Personal Data, and/or allowing Us to collect and process such Personal Data for the following purposes:
- 7.4.1 the provision of the Services in accordance with this Agreement;
  - 7.4.2 Marketing and marketing research purposes.
  - 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 Personal Data to Them to provide the Services. We may also share certain Personal Data via the API services to third parties to provide the API services to the Buyers with the purpose of demonstrating that a Supplier has been certified to the Common Assessment and Our third-party marketing software provider; and/or Sales Demos
  - 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.
- 7.6 In respect of 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.

## **8. Data processing**

- 8.1 The Supplier acknowledges that for the purposes of the Data Protection Legislation, We are the Processor and Supplier is the Controller of any Personal Data and that this Section (Data Processing) constitutes the data processing addendum required by the Data Protection Legislation.
- 8.2 The Supplier shall comply with the requirements of the Data Protection Legislation in respect of the activities which are the subject of the Agreement and shall not knowingly do anything or permit anything to be done which might lead to a breach by the Supplier or Us of the Data Protection Legislation.
- 8.3 The parties agree to perform their obligations under this Agreement in accordance with the Data Protection Legislation.
- 8.4 We warrant, represent and covenant that it will only process Personal Data, when applicable, as set out in the Data Processing Form for the only purpose of providing the Services under this Agreement and for the duration specified herein.
- 8.5 Without prejudice to 8.2 We shall:**



- 8.5.1. process the Personal Data only in accordance with the instructions of the Supplier, unless We are required to process the Personal Data for other reasons under the Personal Data Legislation or any applicable law to which We are subject;
- 8.5.2. inform the Supplier without undue delay if We believe that the Supplier's instructions infringe the Data Protection Legislation or any other applicable law. If this is the case, We without liability shall immediately stop processing the Personal Data in such a way.

## **8.6 Security**

- 8.6.1. We shall have in place, and maintain throughout the Term at all times all appropriate technical and organisational security measures to ensure that Our processing of the Personal Data protects the rights of the Data Subjects and is in accordance with the requirements of the Data Protection Legislation and good industry practice, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, including as appropriate:
  - i. the pseudonymisation and encryption of Personal Data;
  - ii. the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
  - iii. the ability, where possible, to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident; and
  - iv. a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.
- 8.6.2. We shall ensure that all persons authorised to process Personal Data are bound by confidentiality obligations equivalent to those set out in the Agreement and obligations equivalent to those set out in this section and are aware of Our obligations under this Agreement and the Data Protection Legislation.

## **8.7 Collection of Personal Data**

- 8.7.1. During the Registration, We collect Supplier's Personal Data as describe in the Privacy Notice.
- 8.7.2. We process such Personal Data under or in connection with this Agreement, and save as required by law, We only process the Personal data as is necessary to perform all obligations under this Agreement and only in accordance with the instructions provided by the Suppliers.
- 8.7.3. The Member warrants that they have lawful ground for processing Personal Data and where applicable, shall ensure that it obtained during its collection all necessary consents to share the Personal Data with Once For All and to process Personal Data in accordance with this Agreement and evidence of such consents.

## **8.8 Transfers outside of the EEA**

We shall not allow any Personal to be processed or transferred to any country outside of the EEA other than to the UK unless We notify the Supplier in writing that We intend to transfer any Personal Data outside of the EEA other than to the UK and put the Standard Contractual Clauses (SCC) and/or International Data Transfer Agreement (IDTA) in place to safeguard the Data Subjects' rights and/or any other instrument required by the Data Protection Legislation.

## **8.9 Sub-processors**

The Supplier acknowledges that We may engage third parties to carry out processing in connection with the Services ("Sub-Processor") and we shall not do so without the Supplier approval. The Supplier acknowledges and approves the current list of Sub-Processors stated in the Privacy Notice.

#### **8.10 Information provision and data protection audits**

On reasonable notice to request information, We shall:

- i. provide the Supplier with the information required either by the Supplier or a Supervisory Authority to assess Our compliance with this section, with the Data Protection Legislation and, to the extent possible, all information necessary for the Supplier to demonstrate compliance with the Data Protection Legislation;
- ii. allow for and contribute to a reasonable extent to audits, including inspections, conducted by the Supplier and/or a Supervisory Authority (as applicable);
- iii. have the right to charge a reasonable fee for all the associated cost.

#### **8.11 Dealings with Supervisory Authorities and Data Subjects**

We shall promptly provide such reasonable assistance as the Supplier requires in order to respond to Data Subject Requests or requests relating to Personal Data from the Supervisory Authority;

#### **8.12 Personal data breaches**

8.12.1. We shall, notify the Supplier without undue delay upon becoming aware of any incident and/or breach of security leading to possible and/or actual, accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data (a "Security Incident") or any other breach of this section.

8.12.2. In the event of a Security Incident, We shall provide the Supplier with co-operation and reasonable assistance in dealing with the Security Incident, in particular in relation to making any notifications to individuals affected by the Security Incident or to a Supervisory Authority as required by the Data Protection Legislation.

8.12.3. We shall take all steps necessary to prevent a repeat the Security Incident.

#### **8.13 Return or destruction of Data**

Unless We are required to store the Personal Data for certain period of time due to the Data Protection Legislation, another applicable legislation and/or another legal obligation, if the Supplier request Us, We may delete their Personal Data.

#### **8.14 Indemnity**

The Supplier shall indemnify and keep Us indemnified from and against any and all liabilities, losses, expenses, costs, actions, investigations or other proceedings (including legal costs and any amount paid by Us in settlement or compromise of any such actions, claims or proceedings) which We may incur, suffer or sustain as a result of a breach of the Supplier's obligations under this section howsoever arising and will reimburse Us for all costs and expenses (including legal and other professional fees) which are incurred by Us in connection with investigating or defending any such action, claim or proceeding. This indemnity shall not apply, if it is finally judicially determined that the relevant loss, claim, demand, damages, costs, charges, expenses or liabilities resulted primarily from Our negligence.

## **9. FEE AND PAYMENT**

9.1 The Supplier shall pay Us the Fee applicable according to the Subscription Plan chosen in consideration for the Services on their Application From as shown on the SaaS Platform and in line with their invoice.

9.2 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.

- 9.3 Fees are payable annually and the Supplier will be invoiced for each twelve-month period rolling from their first Registration date.
- 9.4 Invoices will be raised at least 30 days in advance of a Supplier's next due payment date.
- 9.5 Unless otherwise agreed in writing with Us, annual Fees 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.
- 9.6 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.
- 9.7 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.
- 9.8 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.
- 9.9 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:
- 9.9.1. 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 Subscription to one that does not include Verification Services;
- 9.9.2. interest shall accrue daily 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;
- 9.9.3. 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
- 9.9.4. are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 9.10 The Supplier agrees that if:
- 9.10.1. We reject the Supplier's Application Form;
- 9.10.2. We deem it necessary to withdraw the Supplier's Data due to any breach of this Agreement;
- 9.10.3. the Supplier fails to achieve an accreditation via the SaaS Platform; or
- 9.10.4. 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.
- 9.11 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.

## **10. INTELLECTUAL PROPERTY RIGHTS**

- 10.1 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, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services.

- 10.2 The Supplier warrants that it shall at all times use the Services in accordance with this Agreement.
- 10.3 For the duration of this Agreement, the Supplier is permitted to use Our logos as depicted on the SaaS Platform solely for the purpose of demonstrating their Subscription and accreditation status with Us.
- 10.4 For the avoidance of doubt, We reserve the right to immediately suspend and/or terminate the Supplier's Subscription, without liability, where We reasonably believe that the Supplier is in breach of this clause 9 and or Personal Data.
- 10.5 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.

## 11. CONFIDENTIALITY

- 11.1 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:
  - 11.1.1. is or becomes publicly known other than through any act or omission of the receiving party;
  - 11.1.2. was in the other party's lawful possession before the disclosure;
  - 11.1.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
  - 11.1.4. is independently developed by the receiving party, which independent development can be shown by written evidence.
- 11.2 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.
- 11.3 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.
- 11.4 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.
- 11.5 The Supplier acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Our Confidential Information.
- 11.6 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.
- 11.7 The above provisions of this clause 10 shall survive termination of this Agreement, however arising.

## 12. INDEMNITY

- 12.1 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 the Services, provided that:

- 12.1.1. the Supplier is given prompt notice of any such claim;
  - 12.1.2. We provide reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
  - 12.1.3. the Supplier is given sole authority to defend or settle the claim.
- 12.2 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, trademark, 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:
- 12.2.1. We are given prompt notice of any such claim;
  - 12.2.2. the Supplier provides Us with reasonable co-operation in the defence and settlement of such claim, at Our expense; and
  - 12.2.3. We are given sole authority to defend or settle the claim.
- 12.3 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.
- 12.4 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:
- 12.4.1. a modification of the Services by anyone other than Us; or
  - 12.4.2. the Supplier's use of the Services in a manner contrary to the instructions given to the Supplier by Us; or
  - 12.4.3. the Supplier's use of the Services after notice of the alleged or actual infringement from Us or any appropriate authority.
- 12.5 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, trademark, database right or right of confidentiality.

## **13. LIMITATION OF LIABILITY**

- 13.1 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 any data or information provided by the platform 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.
- 13.2 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.
- 13.3 Subject to clause 12.1:
- 13.3.1. 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;

13.3.2. 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 the Subscription during the 12 months immediately preceding the date on which the claim arose; and

13.3.3. 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 Subscription during the 12 months immediately preceding the date on which the claim arose.

13.4 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.

## 14. TERMINATION

14.1 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.

14.2 Notwithstanding clause 14.1, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

14.2.1. the Supplier does not complete their Registration within six (6) months of the start of this Agreement, unless otherwise agreed in writing with Us;

14.2.2. 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;

14.2.3. 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;

14.2.4. 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;

14.2.5. 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;

14.2.6. 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;

14.2.7. 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;

14.2.8. 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;

14.2.9. 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 14.2.5 to 14.2.8 (inclusive);

14.2.10. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

14.2.11. in accordance with clause 16.3.

14.3 On termination of this Agreement for any reason:

14.3.1. The Supplier will be able to delete or download all their Data from Our SaaS Platform;

14.3.2. 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;

14.3.3. each party shall return and make no further use of any equipment, property, Services and other items (and all copies of them) belonging to the other party;

14.3.4. 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;

14.3.5. either parties' rights or responsibilities are not affected and continue up to the date this Agreement ends and Clauses 6 (Data) , 7 (Data Protection), 11(Confidentiality), 13 (Limit of Liability), 22 (No partnership or agency) and 26 (Governing law) will continue to apply following termination of the Agreement.

## **15. 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.

## **16. VARIATION**

16.1 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.

16.2 We will notify such changes (including the date on which the change comes into effect) via a notice on the SaaS Platform and where practicable by email and such changes will not come into force for at least 30 days after We give notice of them.

16.3 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.

16.4 Save where this Agreement states otherwise, no variation of this Agreement shall be effective unless it is in writing and signed by the parties.

## **17. 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.

## **18. 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.

## **19. SEVERANCE**

19.1 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.

19.2 If any provision or part-provision of this Agreement is deemed deleted under Clause 19.1 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.

## **20. ENTIRE AGREEMENT**

20.1 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.

20.2 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.

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

20.4 Nothing in this clause 20 shall limit or exclude any liability for fraud.

## **21. ASSIGNMENT & SUBCONTRACTING**

21.1 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.

21.2 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 without prior written notice to or consent from the other party.

## **22. NO PARTNERSHIP OR AGENCY**

22.1 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.

22.2 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).

## **23. THIRD PARTY RIGHTS**

- 23.1 Subject to clauses 23.2 and 23.3, 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.
- 23.2 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.
- 23.3 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.

## **24. NOTICES**

- 24.1 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.
- 24.2 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.

## **25. 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.

## **26. 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.

## **27. 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).