

# TERMS & CONDITIONS

Administration



Accounting



Management



Compliance



Marketing



**C.A.R.L.**

LETTING SOFTWARE

[www.propsoftware.co.uk](http://www.propsoftware.co.uk)  
[enq@propsoftware.co.uk](mailto:enq@propsoftware.co.uk)

01706 508730

# SOFTWARE LICENCE AND SERVICES AGREEMENT

## BACKGROUND

**A.** The Software (as defined below) that you are intending to download/install is the subject of copyright protection and is not freeware or shareware. Property Software Solutions Limited of 84 Beal Lane, Shaw, Oldham, Manchester OL2 8PH ("Property Software Solutions Limited") owns all Intellectual Property Rights (as defined below) in the Software. You are not permitted to copy or run it unless you have been granted a Licence to do so by Property Software Solutions Limited.

**B.** Property Software Solutions Limited is prepared to provide the Services (as defined below) to you and grant you a Licence (as defined below) to use and install the Software on the Permitted Terminals (as defined below), provided you pay all the necessary fees to Property Software Solutions Limited (unless you are using a demonstration version of the Software) and obtain the necessary information from them subject to the Conditions (as defined below).

**C.** By initiating the download/install procedure you are agreeing to accept the Licence subject to the Conditions, whether or not you have actually read them. If you do not wish to be bound by the Conditions, do not download/install/allow to be installed the software.

## TERMS AND CONDITIONS

### Definition and Interpretation

In this Agreement, unless the context otherwise requires, the following words and expressions shall have the following meanings:

#### "Access Code"

a code issued by Property Software Solutions Limited that enables the Customer to activate and use the Software;

#### "Additional Fees"

the fees payable by the Customer to Property Software Solutions Limited at applicable rates from time to time, the current rates of which are set out in the relevant Order Form for the provision of the relevant Additional Services;

#### "Additional Licence Fees"

the licence fee for the grant of additional Licences for the use of the Software by Permitted Users on additional Permitted Terminals, above the number of Licences purchased pursuant to the Initial Software Order Form;

#### "Additional Services"

any and all additional services that the Customer has requested from Property Software Solutions Limited are provided in accordance with the relevant Order Form and are subject to the terms and conditions provided with or included within the relevant Order Form;

#### "Address Finder Service"

the Address Finder service is provided in partnership with a third party supplier sourced by Property Software Solutions Limited in accordance with Condition 6.2;

#### "Agreement"

these Conditions together with each Order Form signed by the Customer for a relevant Service;

#### "Authority"

any governmental, regulatory or administrative body, agency or authority, any arbitrator or any public, private or industry regulatory authority or a judicial or quasi-judicial authority, whether international, national or local;

#### "Business Critical Software Inadequacy"

a Software Inadequacy that causes an immediate serious and material interruption to the income generating activities of the Customer;

#### "Property Software Solutions Limited Website"

Property Software Solutions Limited website as updated and amended from time to time with URL [www.propsoftware.co.uk](http://www.propsoftware.co.uk);

#### "CDPA"

the Copyright, Designs and Patents Act 1988;

#### "Commencement Date"

the commencement date for a Contract as set out in the relevant Order Form or where no Order Form is completed by the Customer and received by Property Software Solutions Limited, the earlier of the date that Property Software Solutions Limited agrees to supply or commences the performance of the relevant Service(s);

#### "Complimentary Services"

Property Software Solutions Limited provide a range of complimentary services including Address Finder and Web-Export/Connect. Such services are provided at the discretion of Property Software Solutions Limited and may be altered, updated or withdrawn at their discretion.

these terms and conditions or any of them;

#### "Content"

the content of the Website, whether in existence now or in the future, being all images, displays, menus, pages, sounds or data accessible by WWW users (which for the avoidance of doubt shall include any such items required for the Web Exporter Services which may be displayed on or used by the Website) and/or the content of any SMS message, whether in existence now or in the future, sent by the Customer using the SMS Service;

#### "Contract"

a contract for the grant of the Licence and supply of Software Support under this Agreement or a contract for the provision of additional Licences in respect of the Software or a contract for the provision of Additional Services, as specified in the relevant Order Form (as applicable);

#### "Contract Year"

a period of 12 months commencing on the date as set out in the Initial Software Order Form and each anniversary thereof;

#### "Customer"

the person named as such in the Initial Software Order Form;

#### "Customer's Comms Link"

all information technology communications links required by the Customer to enable the Customer to receive updates to the Software and to access any of the Services;

#### "Documentation"

the documentation relating to the Software supplied by Property Software Solutions Limited to the Customer in whatever format (including electronic);

#### "Fees"

all fees payable by the Customer to Property Software Solutions Limited under each and every Contract as set out in the relevant Order Form(s) or otherwise and as varied by and payable in accordance with Condition 4 including the Licence Fee, Software Support Fees, Additional Fees and Additional Licence Fees. Where applicable items may be subject to an administrative fee of £25+vat.

#### "Initial Software Order Form"

the Order Form attached to these Conditions setting out the terms for the purpose of the initial Licence by the Customer;

#### "Intellectual Property Rights"

any and all copyrights, moral rights, related rights, patents, supplementary protection certificates, petty patents, utility models, trademarks, trade names, service marks, design rights, database rights, domain name rights, rights in undisclosed or confidential information (such as know-how, trade secrets and inventions (whether patentable or not)), and other similar intellectual property rights (whether registered or not) and applications for any such rights as may exist anywhere in the world;

#### "Licence"

the licence granted pursuant to Condition 2.1;

#### "Licence Fee"

the initial Licence fee set out in the Initial Software Order Form;

#### "Malicious Code"

any virus, worm, Trojan horse or any other destructive or contaminating program;

#### "Order Form"

the order form that the Customer has completed to order the Software and/or Additional Services from Property Software Solutions Limited including the Initial Software Order Form;

#### "Password"

a password issued by the Customer that enables a Permitted User to access and use the Software;

#### "Permitted Use"

use of the Software, by the Permitted Users in connection with the Customer's own property letting and management business;

#### "Permitted Users"

those individuals within the Customer's organisation as set out in the Initial Software Order Form or who have completed the Training as required by Property Software Solutions Limited to the reasonable satisfaction of Property Software Solutions Limited, from time to time;

#### "Permitted Terminals"

those of the Customer's computers for which the Customer has purchased Licences for;

#### "Restricted / Trial Services"

at the time of installation or at any point thereafter Property Software Solutions Limited will at its discretion provide limited / trial access to a range of services including SMS (limited number of SMS credits), Backup (enabling local but backup but without ability to backup on-line), Web-

Exporter/Connect (allowing property advertising data to be submitted to agents own website but not to web portals). Restricted functions are categorized as Additional Services.

#### **“Services”**

any services provided by Property Software Solutions Limited to the Customer pursuant to this Agreement, including the Software Support and Additional Services;

#### **“Software”**

the Property Software Solutions Limited Software in object code form supplied to the Customer by Property Software Solutions Limited pursuant to these Conditions and any updated improved or altered versions provided to the Customer by Property Software Solutions Limited;

#### **“Software Inadequacy”**

any technical or performance fault, error or inadequacy relating to the Software or any failure of the Software to operate substantially in accordance with its specification;

#### **“Software Support”**

the services set out in Condition 5;

#### **“Software Support Fees”**

the annual fees payable by the Customer to Property Software Solutions Limited set out on the Order Form and as varied by and payable in accordance with Condition 4;

#### **“Training”**

such additional training on the operation and use of the Software [and/or Additional Services] as set out in the relevant Order Form;

#### **“VAT”**

value added tax as defined by and payable in accordance with the Value Added Taxes Act 1994;

#### **“Website”**

References to Website include Property Software Solutions Limited Website (client and public pages), the Clients own website (when updated using the Web Export / Connect service) and any website based service provided by Property Software Solutions Limited such as the on-line support;

#### **“Working Day”**

any day on which the clearing banks in the City of London are open for business (excluding 25 December to 1 January (inclusive));

#### **“Working Hours”**

the hours 9.00 am to 5.30 pm on any Working Day or such other hours as Property Software Solutions Limited may determine from time to time.

#### **1. In these conditions any reference to:**

- 1.1.** “writing” Or cognate expressions includes a reference to email or facsimile transmission;
- 1.2.** any provision of a statute shall be construed as a reference that provision as amended, re-enacted or extended at the relevant time;
- 1.3.** the masculine gender includes the feminine and neuter and vice versa;
- 1.4.** a Condition is to one of these Conditions;
- 1.5.** persons includes companies, associations, partnerships and all other legal entities or groups of legal entities;
- 1.6.** “including”, “includes” and “in particular” are illustrative only and none of them shall limit the sense of the words preceding them and each of them shall be deemed to incorporate the expression “without limitation”;
- 1.7.** The headings in these Conditions and any Order Form are for convenience only and shall not affect the interpretation of this Agreement;
- 1.8.** These Conditions shall prevail over any inconsistent terms or conditions contained or referred to in the Customer's quotation request, confirmation of order, specification or other document supplied by the Customer, whether before, on, or after the date of this Agreement, or implied by law, trade, custom, practice or course of dealing. [If there is any conflict between the content of an Order Form and these Conditions, the relevant Order Form shall take precedence.]

## **2. LICENCE AND SERVICES**

**2.1.** Subject to these Conditions and in consideration of the payment by the Customer to Property Software Solutions Limited of the Licence Fee, the Software Support Fees and Additional Fees in accordance with Condition 4, Property Software Solutions Limited;

- 2.1.1.** grants the Customer a non-exclusive non-transferable Licence for the Permitted Terminals to access and use the Software and Documentation for the Permitted Use from the Commencement Date of that Contract until that Contract is terminated in accordance with

Condition 11 or otherwise in accordance with the terms of the Contract to which such Licence relates;

**2.1.2.** undertakes to the Customer to use reasonable endeavors to provide the Software Support; and

**2.1.3.** undertakes to use reasonable endeavors to provide the relevant Additional Services.

**2.2.** If the Customer requests Property Software Solutions Limited to make amendments to the Software, such amendments and Property Software Solutions Limited's charges for making such amendments must be agreed in writing between the Customer and Property Software Solutions Limited and such amendments shall form part of the Software and be subject to all the provisions of these Conditions.

**2.3.** The Customer shall not permit, allow, procure or enable the Software and/or any Services to be used:

**2.3.1.** as a bureau service; or

**2.3.2.** for the purpose of operating a third party's property management or lettings business.

## **3. COMMENCEMENT AND TERM**

**3.1.** This Agreement shall commence on the date of the Initial Software Order Form and shall continue until terminated by Property Software Solutions Limited or the Customer pursuant to Condition 11.

**3.2.** Each Contract shall commence on the date set out in the relevant Order Form and shall continue for the term set out in the relevant Order Form unless terminated by Property Software Solutions Limited in accordance with this Agreement.

**3.3.** New business package. To qualify for this offer you must have been trading for less than twelve months and have fewer than seventy five managed properties at the time of purchase. Package is for a single user. Additional licences and all other services provided at standard rate. Software subject to minimum PC specifications. This offer is for new clients only.

## **4. FEES**

**4.1.** The Licence Fee is payable by the Customer to Property Software Solutions Limited upon signature of the Initial Software Order Form by the Customer.

**4.2.** Software Support Fees are payable in advance in accordance with the payment terms set out in the Initial Software Order Form.

**4.3.** All Additional Fees and Additional Licence Fees are payable in accordance with the applicable payment terms set out in the relevant Order Form.

**4.4.** Property Software Solutions Limited shall be entitled to increase the Fees in respect of a given Contract not more than once in every period of 12 months during the currency of that Contract by giving written notice to the Customer, whether in an invoice for the next year's Fees or otherwise (a “Notice of Increase”). If the Customer does not formally object to a proposed increase in such Fees in writing within 10 days of the Notice of Increase being sent by Property Software Solutions Limited then the Customer shall be deemed to have accepted the new Fees. If the Customer does validly object to the increase in such Fees as above, then Property Software Solutions Limited may terminate the Services and/or the Contract to which such Fees relate as from the next renewal date applicable to those Services.

**4.5.** All amounts referred to in these Conditions are exclusive of VAT and other sales tax and any such tax arising in respect of any Fees shall be paid to Property Software Solutions Limited by the Customer in addition to any other consideration payable therefor.

**4.6.** The Fees shall be payable by the Customer without any set-off, deduction or any other form of withholding unless otherwise required by law.

**4.7.** If the Customer requests an increase in the number of Permitted Terminals then Property Software Solutions Limited shall have the right to charge the Additional Licence Fees and/or to increase the Software Support Fees in accordance with Property Software Solutions Limited's rates from time to time in force. However, the provisions of Clause 11.2 shall not apply to the grant of such additional Licences.

## **5. SOFTWARE SUPPORT**

**5.1.** Software Support consists of Property Software Solutions Limited using reasonable endeavors during Working Hours, conditional upon

payment in full of all Software Support Fees and other sums payable under any Contract or otherwise by the Customer to Property Software Solutions Limited that have fallen due for payment to Property Software Solutions Limited to:

- 5.1.1.** advise and assist the Customer in using the Software;
- 5.1.2.** investigate any Software Inadequacy;
- 5.1.3.** provide a remedy for any Software Inadequacy;
- 5.1.4.** use reasonable endeavors to provide as and when they are available and license to the Customer on the same terms as the Licence updates and improvements to the Software PROVIDED however that the functionality available in new versions of the Software may not include all the features available in the current or any previous version of the Software AND PROVIDED FURTHER that such updates shall be made available either by download from the internet, using the C.A.R.L. Auto Update, Self Update or Update Link functions or on a CD at Property Software Solutions Limited's discretion.

**5.2.** If the Customer wants to inform Property Software Solutions Limited of a Software Inadequacy, then the Customer may contact Property Software Solutions Limited by:

- 5.2.1.** telephoning 01706 508730; or
- 5.2.2.** sending an email to

[enq@propsoftware.co.uk](mailto:enq@propsoftware.co.uk)

and shall provide Property Software Solutions Limited with all of the information relating to the Software Inadequacy required by Property Software Solutions Limited.

**5.3.** Software Support does not include investigating or remedying or attempting to alleviate the consequences of:

- 5.3.1.** the improper or negligent use, operation or neglect of the Software or use of the Software other than by a Permitted User for the Permitted Use on a Permitted Terminal;
- 5.3.2.** the modification of the Software or its merger (in whole or in part) with any other software or any repair, adjustment, alteration or modification of the Software by any person other than Property Software Solutions Limited;
- 5.3.3.** the use of the Software on inadequate equipment;
- 5.3.4.** the failure by the Customer to implement recommendations previously advised by Property Software Solutions Limited in relation to the use of the Software, or otherwise;
- 5.3.5.** any use copying or adaptation of the Software in breach of these Conditions or any other agreement between the Customer and Property Software Solutions Limited;
- 5.3.6.** the Customer's failure to upgrade the Software with new versions of it in substitution for previous releases when recommended to do so by Property Software Solutions Limited;
- 5.3.7.** the use of the Software for a purpose for which it was not designed;
- 5.3.8.** any problems caused by any third party software (being any software in respect of which Property Software Solutions Limited is not the proprietary owner).

**5.4.** Property Software Solutions Limited is under no obligation to provide a solution to any problem experienced by the Customer which is not a Software Inadequacy.

**5.5.** If the Software Inadequacy is a Business Critical Software Inadequacy, Property Software Solutions Limited will use all reasonable endeavors to provide the services described in Clause 5.1 within two Working Days following receipt by Property Software Solutions Limited of details of the Software Inadequacy.

**5.6.** If the Software Inadequacy is not a Business Critical Software Inadequacy, Property Software Solutions Limited will use all reasonable endeavors to provide the services described in Clause 5.1 within ten Working Days following receipt by Property Software Solutions Limited of details of the Software Inadequacy.

**5.7.** The Customer shall at all times during the term of the Contract for the provision of Software Support provide free of charge for Property Software Solutions Limited and its servants, agents, sub-contractors and employees remote access via such telecommunications links as Property Software Solutions Limited may specify from time to time to live and realistic tests/simulations of the Software as installed including realistic data to permit Property Software Solutions Limited to test the Software or any application of it as installed or implemented and to investigate any

problems reported by the Customer.

## 6. ADDITIONAL SERVICES

### 6.1. Training

- 6.1.1.** Property Software Solutions Limited shall use its reasonable endeavors to provide the Training on the dates, times and at such locations as are set out in the relevant Order Form or agreed between Property Software Solutions Limited and the Customer from time to time;
- 6.1.2.** In addition to any Additional Fee payable by the Customer for the provision of Training, the Customer shall also pay all expenses incurred by Property Software Solutions Limited in providing the Training;
- 6.1.3.** The Training shall be provided by such of Property Software Solutions Limited employees, agents or subcontractors, as Property Software Solutions Limited deems in its absolute discretion are suitably qualified to provide the required Training.
- 6.1.4.** The Customer shall provide such information and/or access to the Customer's business, resources, personnel, records and premises as Property Software Solutions Limited requires to provide the Training;
- 6.1.5.** The Customer shall provide facilities that are reasonably acceptable to Property Software Solutions Limited for the Training to take place at.
- 6.1.6.** The Customer shall procure that the minimum number of its employees (as set out on the relevant Order Form or notified by Property Software Solutions Limited to the Customer) are available to attend, and attend the Training on the dates and times set out in the relevant Order Form. If such minimum numbers of employees do not attend the Training, Property Software Solutions Limited shall not be obliged to provide such Training. However, the Customer shall be obliged to pay the Additional Fees and such other expenses incurred by Property Software Solutions Limited in attending the Customer's premises for the provision of Training.
- 6.1.7.** The Customer shall immediately notify Property Software Solutions Limited if its requirements for Training change. If the Customer wishes to cancel any Training it must provide Property Software Solutions Limited with at least 48 hour's written notice before the Training is due to commence of its intention to do so. If the Customer fails to provide such notice to Property Software Solutions Limited, the Customer shall be liable to pay the Additional Fees for such Training together with such other expenses incurred by Property Software Solutions Limited in connection with the provision of such

**6.2.** Address Finder Service, SMS and Web Exporter/Connect (complimentary and restricted / trial services)

- 6.2.1.** Property Software Solutions Limited shall use its reasonable endeavors to provide access [during the Working Hours] to those services that are provided in partnership with a third party supplier
- 6.2.2.** Property Software Solutions Limited shall use its reasonable endeavors to source a relevant Licence from the appropriate third party provider, for the provision of such services on the third party's standard terms and conditions.
- 6.2.3.** The Customer acknowledges and agrees that, in order for Property Software Solutions Limited to comply with its obligations set out in Condition 6.5.2, Property Software Solutions Limited may transfer the information relating to the Customer and this Agreement including personal data (as defined in the Data Protection Act 1998) to the relevant third party supplier who may use such information in order to provide the required services to the Customer.
- 6.2.4.** The Customer acknowledges and agrees that any service which it is provided by a third party is not under Property Software Solutions Limited's control and Property Software Solutions Limited make no representations or warranties in relation to such services or their availability at any time.
- 6.2.5.** Property Software Solutions Limited shall have no liability to the Customer for any claims, demands, expenses and liabilities of whatsoever nature arising out of or in connection with the provision of such services or any claim or allegation that the Customer is in breach of its obligations under any agreement or Licence with a relevant third party supplier and the Customer shall fully indemnify and keep Property Software Solutions Limited fully indemnified in respect of the same.

## 7. CUSTOMER'S OBLIGATIONS

**7.1.** The Customer shall:

- 7.1.1.** not under any circumstances copy transmit or reveal or permit or

suffer to be copied transmitted or revealed any Access Code or Password to any person other than a reliable permanent employee of the Customer to whom the Access Code or Password needs to be revealed to permit the Customer to make Permitted Use of the Software. The Customer is responsible for all use of its Access Code and/or Passwords, whether or not such use was actually or expressly authorised by the Customer;

**7.1.2.** not use or permit or suffer the Software nor the Documentation to be used for any purpose other than the Permitted Use, and whenever it becomes aware that this restriction has or may have been breached the Customer shall promptly inform Property Software Solutions Limited in writing;

**7.1.3.** before each anniversary of the date of the Initial Software Order Form, inform Property Software Solutions Limited of any requirement to increase the number of Permitted Terminals;

**7.1.4.** ensure that the configuration of hardware, firmware and software on, under or with which the Software is run is sufficient in functionality and performance and shall ensure that all the normal procedures and precautions relevant to a computerised system, including but without limitation those relating to physical and electronic security, confidentiality and the taking of frequent regular backups are observed and performed;

**7.1.5.** ensure that the Software is correctly used and that the Customer's employees are properly trained to use the same to trace and correct running faults to restart and recover after a fault and to operate suitable checks for accuracy of input and output;

**7.1.6.** check the output of the Software to ensure that the Software is operating correctly;

**7.1.7.** copy the Software for back-up purposes only and the original and any copies of Software in whole or in part which are made by the Customer shall be the property of Property Software Solutions Limited;

**7.1.8.** reproduce on any copy (whether in machine or human readable form) of the Software or the Documentation Property Software Solutions Limited's copyright and trade mark notices and shall not remove or alter any copyright, trade mark or other proprietary notice or mark on any of the Software or Documentation;

**7.1.9.** without prejudice to the foregoing take all such other steps as shall from time to time be necessary to protect the confidential information and Intellectual Property Rights of Property Software Solutions Limited in the Software and the Documentation;

**7.1.10.** notify Property Software Solutions Limited immediately if the Customer becomes aware of any unauthorized use of the whole or any part of the Software, Access Code or a Password by any third party;

**7.1.11.** save solely for the purposes expressly permitted by and in accordance with s.296A(1) CDPA and s.50B(2) CDPA copy, adapt or decompile the whole or any part of the Software and in the event that such compilation or copying is carried out by the Customer pursuant to s.296A(1) or s.110B(2) CPDA all rights in any resultant source code shall belong exclusively to Property Software Solutions Limited subject to a non-exclusive non-transferable free licence for the Customer to be able to refer to that source code for the purposes of s.50B(2) CDPA only on condition that no disclosure of it is made to any third party;

**7.1.12.** not assign, transfer, sell, lease, rent, charge, or hold the Software or the Documentation on trust for any third party or otherwise deal in or encumber the Software or the Documentation or make them available to any third party;

**7.1.13.** not use any version of the Software after the period for which it was designed expires;

**7.1.14.** obtain and maintain, at its own expense, all computer hardware, software, Customer Comms Links and access lines necessary to use the Software for the Permitted Use;

**7.1.15.** indemnify and keep indemnified Property Software Solutions Limited against all costs, claims, demands, expenses and liabilities of whatsoever nature arising out of or in connection with any breach of the Customer's obligations under the Contract and the Customer's warranties contained in these Conditions;

**7.1.16.** use the Software in accordance with all relevant laws and regulations including without limitation those relating to the protection of personal data.

## **7.2.** The Customer undertakes to:

**7.2.1.** Comply with Property Software Solutions Limited's rules and requirements relating to the Customer's use of the Software, the Website and all Additional Services provided by Property Software Solutions Limited pursuant to any Contract from time to time and acknowledges and agrees that Property Software Solutions Limited is

entitled at any time and without notice to remove the Website from Property Software Solutions Limited's or its appointed service provider's server and/or bar access to the same in the event of any violation or alleged or suspected violation of such rules and requirements or if otherwise authorised so to do by a competent Authority;

**7.2.2.** Use the Website and all other Additional Services or services provided by Property Software Solutions Limited under each Contract in accordance with Property Software Solutions Limited's instructions;

**7.2.3.** Keep full security copies of all data processed by the Website in accordance with best computing practice;

**7.2.4.** Ensure that all the Customer's staff who use the Software, Website and/or any of the Additional Services are properly trained in respect of such use;

**7.2.5.** refrain from:

7.2.5.1. sending mass unsolicited communications ("spam");

7.2.5.2. sending Malicious Code or other disruptive programs or devices;

7.2.5.3. pirating or otherwise illegally copying software or other proprietary material;

7.2.5.4. violating the security of any website or engaging in unauthorized decryption of protected material.

**7.3.** The Customer represents, warrants, undertakes and agrees with Property Software Solutions Limited as follows:

**7.3.1.** the Customer is/will be (as applicable) the sole author and creator of the Content and the sole unencumbered absolute legal and beneficial owner of all Intellectual Property Rights in the Content and other rights of whatsoever nature in the Content throughout the world and is and shall remain at all material times during the creation of the Content a "qualifying person" within the meaning of the CDPA;

**7.3.2.** the Content is/will be (as applicable) original to the Customer and does not and shall not infringe any Intellectual Property Rights or any other rights whatsoever of any person;

**7.3.3.** the Content is not/will not be (as applicable) under the laws of any legal jurisdiction obscene or blasphemous or offensive to religion or defamatory to any person and does not/will not contain any material which has been obtained in violation of the Interception of Communications Act 1985 the Official Secrets Act 1989 the Regulation of Investigatory Powers Act 2000 or any analogous foreign legislation and nothing contained in the Content would if published constitute a contempt of Court;

**7.3.4.** all information contained in the Content is/ will be (as applicable) true, accurate and complete in all respects;

**7.3.5.** the Customer will ensure that the Website and the Customer's use of the SMS Service will fully comply with all laws for the time being in force and the Advertising Standards Authority's codes of practice, rules and regulations from time to time including without limitation the British Codes of Advertising Sales and Sales Promotion and any applicable legislation relating to distance selling, and that the Content does and will at all times during the continuance of this Agreement comply with all such laws, rules, codes of practice and regulations and will not be defamatory, obscene, blasphemous or be in breach of any other applicable laws, statutes, regulations or rules

**7.3.6.** of any other governmental, regulatory or other authority;

**7.3.7.** the Customer will read, check and correct the content of the Website every 4 hours;

**7.3.8.** the Customer's use and operation of the Website and Services will fully comply with the provisions of all data protection and human rights legislation from time to time in force including without limitation the Data Protection Act 1998, the Human Rights Act 1998 and the Regulation of Investigatory Powers Act 2000;

**7.3.9.** the Customer's use and operation of the Website and Services will fully comply with the provisions of all applicable laws relating to the sale of goods and services over the internet;

**7.3.10.** The Customer shall indemnify Property Software Solutions Limited and keep Property Software Solutions Limited at all times fully indemnified from and against all actions proceedings claims demands costs (including without prejudice to the generality of this provision the legal costs of Property Software Solutions Limited on a solicitor and own client basis) and other liabilities however arising directly or indirectly as a result of any breach or non-performance by the Customer of any Customer's undertakings covenants warranties or obligations under these Conditions;

**7.3.11.** the warranties contained in this Condition shall remain in full

force and effect after the Commencement Date.

## 8. INTELLECTUAL PROPERTY RIGHTS & DATA

**8.1.** The Software and the Website (excluding the Content) and all Intellectual Property Rights in the Software, the Website (excluding the Content) and the Services are and shall remain the exclusive property of Property Software Solutions Limited.

**8.2.** The Customer acknowledges and agrees that Property Software Solutions Limited may access and use anonymised data processed by the Customer using the Software.

## 9. WARRANTY

**9.1.** Property Software Solutions Limited warrants that its title to and property in the Software is free and unencumbered and that it has the right, power and authority to license the same upon these Conditions.

**9.2.** Subject to the other provisions of these Conditions, Property Software Solutions Limited warrants that for the period of ninety days from the date of the Initial Software Order Form the Software will operate substantially in accordance with Property Software Solutions Limited's specification.

**9.3.** Property Software Solutions Limited warrants that it will perform the Services pursuant to a relevant Contract with reasonable care and skill.

**9.4.** Property Software Solutions Limited does not warrant that the Software does not contain bugs, errors, or defects and in the event that the Customer reports a defect to Property Software Solutions Limited the Customer hereby agrees to afford Property Software Solutions Limited not less than 30 days in which to remedy any such bugs, errors, or defects and no such bug, error, or defect shall entitle the Customer to repudiate this Agreement.

**9.5.** Property Software Solutions Limited makes no warranty and the Customer acknowledges that no warranty is given expressly or impliedly that the Software will meet the Customer's data processing requirements or that the operation of the Software will be uninterrupted or error free.

**9.6.** The Customer accepts that the Software was not designed and produced to the Customer's individual requirements and that it was responsible for its selection.

**9.7.** The Software is a tool to aid the Customer, but the Customer should satisfy itself of the accuracy of any figures calculated using the Software and the correctness of any forms completed using the Software. The Customer is responsible for ensuring that any forms and/or documents comprised within the Software are suitable for each purpose for which the Customer may use them. Property Software Solutions Limited will not be under any liability if the Software is used in a manner in breach of these Conditions.

**9.8.** Property Software Solutions Limited will have no liability to the Customer or any third party for any service provided by the Customer to anyone. The Customer shall have sole responsibility for the service that it provides to its clients.

**9.9.** Property Software Solutions Limited makes no representations or warranties that use of the Software, and/or the Services or any other similar services provided by Property Software Solutions Limited will be uninterrupted or error-free. Property Software Solutions Limited cannot accept any responsibility for interruption to the availability of the Software or the provision of the Services if this is due to reasons beyond Property Software Solutions Limited's control, in particular, interruption to the availability of the internet or any network used by Property Software Solutions Limited for the provision of such Services or the Customer's Comms Link or Property Software Solutions Limited's connection thereto.

**9.10.** The Customer acknowledges and agrees that the Customer is responsible for checking the accuracy of the data that is processed using the Software or that is entered by Property Software Solutions Limited in the course of providing the Services to the Customer. Accordingly, Property Software Solutions Limited shall have no liability for any errors, omissions, inaccuracy or incompleteness of such data.

**9.11.** The Customer acknowledges and agrees that:

**9.11.1.** computer software including the Software is not error, fault or bug free, nor secure from persons wishing to misuse, tamper with, erase, alter or in any other way corrupt computer systems and that the data, information and records they display, retrieve, collate, transfer, calculate or disseminate may be affected by such occurrences, and the Customer agrees that Property Software Solutions Limited shall have no liability to the Customer nor to any other third party for any such occurrences arising in respect of or in relation to the Software;

**9.11.2.** websites in general including the Website are not error, fault or

bug free nor secure from persons wishing to misuse, tamper with, erase, alter or in any other way corrupt websites, and the data, information and records they display, retrieve, collate, transfer or disseminate may be affected by such occurrences and the Customer agrees that Property Software Solutions Limited

**9.11.3.** shall have no liability to anyone for any such occurrences arising in respect of or in relation to the Website;

**9.11.4.** networks for the transmission of SMS messages and/or emails are not error, fault or bug free nor secure from persons wishing to misuse, tamper with, erase, alter or in any other way corrupt SMS messages and/or emails, and the data, information and records they display, retrieve, collate, transfer or disseminate may be affected by such occurrences and the Customer agrees that Property Software Solutions Limited shall have no liability to anyone for any such occurrences arising in respect of or in relation to the provision of the SMS Service, in particular the delay to or non-receipt of any email or SMS message sent via the SMS or email service within or part of the Software;

computer servers including the Backup Server are not error, fault or bug free nor secure from persons wishing to misuse, tamper with, erase, alter or in any other way corrupt servers, and the data, information and records they display, retrieve, collate, transfer or disseminate may be affected by such occurrences and the Customer agrees that Property Software Solutions Limited shall have no liability to anyone for any such occurrences arising in respect of or in relation to the Software Backup.

**9.11.5.** Subject to the foregoing, all conditions, warranties, terms and undertakings, express or implied, statutory or otherwise, in respect of the Software or the provision of the Services are hereby excluded to the fullest extent permitted by law.

## 10. LIMITATION OF LIABILITY

**10.1.** The following provisions set out the entire liability of Property Software Solutions Limited (including any liability for the acts and omissions of its employees, agents and sub-contractors) to the Customer in respect of:

**10.1.1.** any breach of its contractual obligations arising under any Contract; and

**10.1.2.** any mis-representation, mis-statement or tortious act or omission including negligence (excluding any of the same made fraudulently) arising under or in connection with any Contract.

**10.2.** Any act or omission on the part of Property Software Solutions Limited or its employees, agents or sub-contractors falling within Condition 10.1 shall for the purposes of this Condition 10 be known as an "Event of Default".

**10.3.** The liability of Property Software Solutions Limited to the Customer for death or injury resulting from its own negligence or that of its employees, agents or sub-contractors shall not be limited.

**10.4.** Subject to Condition 10.3, the total liability of Property Software Solutions Limited in respect of all Events of Default in any Contract Year shall be limited to damages of an amount equal to:

**10.4.1.** £250,000 in respect of damage or loss to the tangible property of the Customer due to an Event of Default; and

**10.4.2.** in respect of any other damage or loss, 125% of the amount of the Fees that have been paid to Property Software Solutions Limited in the immediately preceding Contract Year.

**10.5.** Subject to Conditions 10.3 and 10.4, the total liability of Property Software Solutions Limited in respect of all Events of Default in any Contract Year under a given Contract shall be limited to damages of an amount equal to:

**10.5.1.** £250,000 in respect of damage or loss to the tangible property of the Customer due to an Event of Default; and

**10.5.2.** in respect of any other damage or loss 125% of the Fees that have been paid to Property Software Solutions Limited under that Contract in the immediately preceding Contract Year.

**10.6.** Subject to Conditions 10.3, 10.4 and 10.5, Property Software Solutions Limited shall not be liable to the Customer in respect of any Event of Default for any losses or damage which may be suffered by the Customer (or any person claiming through or under the Customer), 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:

**10.6.1.** special damage even though Property Software Solutions

Limited was aware of the circumstances in which such special damage could arise;

- 10.6.1.1. loss of profits;
- 10.6.1.2. loss of turnover;
- 10.6.1.3. loss of anticipated savings;
- 10.6.1.4. loss of business opportunity;
- 10.6.1.5. loss of goodwill;
- 10.6.1.6. loss of data;

provided that this Condition 10.6 shall not prevent claims for loss of or damage to the Customer's tangible property that fall within the provisions of Condition 10.4 or any other claim for direct financial loss that are not excluded by Conditions 10.6.1 to 10.6.7 inclusive.

**10.7.** Without prejudice to the generality of any other term of these Conditions and subject to Condition 10.3, Property Software Solutions Limited shall not be liable for any damage or losses or for any additional damage or losses arising from an Event of Default that resulted from a failure on the part of the Customer to observe and perform its obligations under this Agreement and/or any Contract.

**10.8.** If a number of Events of Default arise under a number of Contracts and out of the same or similar circumstances and give rise substantially to the same loss, then they shall be regarded as giving rise to only one claim under this Agreement.

**10.9.** Subject to Conditions 10.3, 10.4 and 10.5, Property Software Solutions Limited shall not be liable to the Customer for any losses, damages, costs or expenses, which the Customer shall suffer or incur by reason of:

- 10.9.1.** any unauthorised access or use of the Software or its access or use of the Software in breach of these Conditions;
- 10.9.2.** its failure to ensure at all times that it has secure up-to-date and usable copies of any necessary operating systems;
- 10.9.3.** problems caused by software or hardware issues within the Customer's Comms Link and Customer's environment;
- 10.9.4.** its failure to undertake essential system management and security functions recommended by Property Software Solutions Limited;
- 10.9.5.** its use of the Software after it became or should have become aware of an Event of Default but before Property Software Solutions Limited has confirmed that a solution has been completed; or
- 10.9.6.** impairment of the performance of the Software if this is due to circumstances beyond Property Software Solutions Limited direct control, in particular, interruption to the availability or degradation of the speed of the internet or the communications links, which are provided to Property Software Solutions Limited by third parties.

**10.10.** In the event that the Customer receives data from Property Software Solutions Limited:

- 10.10.1.** to the extent that such data is based on or incorporates data provided to Property Software Solutions Limited by a third party Property Software Solutions Limited can give no warranty as to the accuracy or completeness of that data;
- 10.10.2.** to the extent that such data is based on or incorporates data provided to Property Software Solutions Limited by a third party Property Software Solutions Limited shall have no liability for any error or omission in that data save in respect of any fraudulent misrepresentation contained therein or constituted by such data and save in respect of any death or personal injury which occurs as a consequence of such errors or omissions; and
- 10.10.3.** the Customer acknowledges that the only person who can warrant the accuracy of such data and take liability for it is the third party supplier or other organisation who is providing third party services and that any use of the data provided by Property Software Solutions Limited is at the Customer's risk.

**10.11.** The Customer declares and acknowledges that it has considered the provisions of this Condition 10 in detail including but without limitation each of the limitations on liability contained in Conditions 10.2 to 10.10 (inclusive) and considers them reasonable in the circumstances having taken into account among other factors the subject matter of this Agreement and having obtained or had the opportunity to obtain independent legal advice on the same.

## 11. TERMINATION AND SUSPENSION

**11.1.** For the purpose of this Condition 11.1, the following shall be a "Default" if at any time the Customer:

**11.1.1.** shall be in [material] breach of this Agreement of any term of any Contract and, in the case of a [material] breach capable of remedy, the Customer fails to remedy the same within 30 days of a written notice from Property Software Solutions Limited giving particulars of the breach and requiring it to be remedied; or

**11.1.2.** fails to pay any sum due under any Contract within 30 days of the due date for payment; or

**11.1.3.** (being an individual or if more than one individual then any one of them) has a bankruptcy petition presented against him or is adjudged bankrupt; or

**11.1.4.** (being a company) makes a proposal for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or a proposal for any other composition, scheme or arrangement with (or assignment for the benefit of) its creditors generally or if the Customer shall be unable to pay its debts as they fall due within the meaning of Section 123 of the Insolvency Act 1986 or if a trustee, receiver, administrator, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the Customer or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the Customer or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction).

**11.1.5.** sells or disposes in any way of the whole or any substantial part of the Customer's business by one or a series of transactions; or

**11.1.6.** control (as defined in s840 of the Income and Corporation Taxes Act 1988) of the Customer is acquired by any person or group of connected persons (as defined in s839 of that Act) not having control of the Customer at the Commencement Date, in which case the Customer shall forthwith give written notice to Property Software Solutions Limited identifying that person or group of connected persons.

Where a Default has occurred, Property Software Solutions Limited may, at its option, terminate this Agreement or any Contract and/or suspend the provision of any Services (including the Software Support) unless or until the Default is remedied, without prejudice to any other rights or remedies Property Software Solutions Limited may have under this Agreement any Contract or otherwise.

**11.2.** If the Customer is not satisfied with the Software supplied in accordance with the Initial Software Order Form, then it may terminate this Agreement and any other Contract entered into between Property Software Solutions Limited and the Customer within 30 days from the date of the Initial Software Order Form. In that case, Property Software Solutions Limited shall refund to the Customer the Licence Fee paid by the Customer less any costs and expenses reasonably incurred by Property Software Solutions Limited in providing the Software and the Customer must immediately cease use of the Software and (if applicable) the Website.

**11.3.** After the initial 30 day period, 3 months written notification is required to terminate all Rental and Purchase agreements along with Software support contract.

**11.4.** Property Software Solutions Limited may, by giving not less than one month's prior written notice to the Customer, such notice not to expire before the first anniversary of the Commencement Date of the relevant Contract, terminate that Contract.

**11.5.** Where Property Software Solutions Limited terminates the Contract for the Licence and Software Support, then Property Software Solutions Limited shall have the right to terminate this Agreement and all other Contracts arising under or pursuant to this Agreement without prejudice to any other rights or remedies Property Software Solutions Limited may have pursuant to such termination.

**11.6.** Following termination of a Contract or this Agreement, the Customer shall have no right to a refund in respect of any Fees payable under that Contract or this Agreement.

**11.7.** The Customer acknowledges and agrees that if Contract for the Licence and Software Support or this Agreement is terminated or expires, the Customer shall immediately cease use of the Software. However the Customer may retain one copy of the Software solely for archive purposes but must not use the Software for the processing of live data.

**11.8.** The obligations on the Customer contained in these Conditions relating to confidentiality of the Access Code, the Password(s) the Software, the Documentation and any confidential information of Property Software Solutions Limited shall not be affected or prejudiced by the termination of the Contract.

**11.9.** Termination of a Contract or this Agreement (howsoever arising) shall not affect the accrued rights of either party as at the date of termination and those Conditions which are expressed to or implied to survive termination

or expiry of a relevant Contract or this Agreement shall remain in full force and effect.

## 12. GENERAL

**12.1.** If any provision of this Agreement 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 Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt 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.

**12.2.** Any failure by Property Software Solutions Limited to enforce any provision of a Contract shall not be construed as a waiver of such provision or of a right thereafter to enforce the same.

**12.3.** The Customer acknowledges that in entering into the Contract the Customer has not relied on any warranty, representation, undertaking or agreement other than those contained or referred to in these Conditions and/or the relevant Order Form. The Customer waives any right or remedy the Customer may have to claim damages or rescission for any misrepresentation in respect of any representation not contained in these Conditions and/or the relevant Order Form or for breach of any warranty not contained in these Conditions and/or the relevant Order Form and acknowledges that the Customer's only remedies against Property Software Solutions Limited are for breach of contract and subject to these Conditions, provided always that nothing in this Condition 12.3 shall exclude or limit Property Software Solutions Limited's liability to the Customer in respect of any fraudulent misrepresentation or warranty fraudulently given and upon which the Customer can prove that the Customer has placed reliance. Subject to the foregoing, these Conditions and the documents referred to herein constitute the entire agreement and understanding between the parties with respect to all the matters which are referred to in these Conditions.

**12.4.** This Agreement, each Contract and these Conditions and any dispute arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) shall be governed and construed in accordance by English Law and the parties agree to submit to the non-exclusive jurisdiction of the English Courts for such matters.

**12.5.** The Customer shall not be entitled to assign sub-license delegate nor hold for the benefit of any other person or otherwise transfer the Contract nor any of the Customer's rights or obligations under the Contract nor sub-license or permit or suffer the use (in whole or in part) of the Software and/or the Website without the prior written consent of Property Software Solutions Limited.

**12.6.** Notwithstanding anything to the contrary contained in these Conditions, the parties agree and intend that each Contract and this Agreement shall not create any rights enforceable by any person not a party to it.

**12.7.** Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

**12.8.** The parties shall not, subject to complying with the provisions of this Clause 12.8, be liable for any breach of its obligations hereunder resulting from an Event of Force Majeure.

**12.9.** Each of the parties agrees to give notice forthwith to the other upon becoming aware of an Event of Force Majeure such notice to contain details of the circumstances giving rise to the Event of Force Majeure.

**12.10.** If a default due to an Event of Force Majeure shall continue for more than four weeks then the party not in default shall be entitled to terminate this Agreement. Neither party shall have any liability to the other in respect of the termination of this Agreement as a result of an Event of Force Majeure.

**12.11.** Time for the performance of the services to be provided by Property Software Solutions Limited under a relevant Contract shall not be of the essence.

**12.12.** All notices to be given by either party to the other under the Contract shall be given by email. Notices to Property Software Solutions Limited shall be sent to

**12.13.** This Agreement and each Contract shall be binding upon and take effect for the benefit of the successors in title of the parties hereto.

**12.14.** Nothing in these Conditions, this Agreement or any Contract shall create a partnership, agency, joint venture or relationship of employer and employee.

[enq@propsoftware.co.uk](mailto:enq@propsoftware.co.uk)

and notices to the Customer shall be sent to the email address notified by the Customer to Property Software Solutions Limited from time to time. Each party is responsible for informing the other party of any changes to their email address.