

TERMS OF BUSINESS

1 INTERPRETATION

1.1 In these terms and (except where the context otherwise requires) in any Order Confirmation, the following words shall have the following meanings:

Application: any software made or supplied by PropertyMall that performs a specified function.

Charges: the charges payable by the Client in accordance with clause 5, as set out in the Order Confirmation.

Contract: any contract between the Company and the Client for the sale and purchase of the Services, incorporating these conditions.

Client: the Client named in the Order Confirmation, to whom PropertyMall is to provide the Services.

Client Material: any Material provided by the Client for incorporation into any PropertyMall Material.

Inappropriate Content: any Material that (a) is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, menacing or blasphemous; or (b) infringes the Intellectual Property Rights of any third party; or (c) infringes any right of privacy, confidentiality or legal privilege.

Material: any material in which any Intellectual Property Rights do or may subsist.

PropertyMall: PropertyMall Limited (company number 631 2956 registered in England & Wales).

PropertyMall Material: any Material originated or supplied by PropertyMall in the course of providing the Services.

Initial Term: the initial term (if any) for the Services, as specified in the corresponding Order Confirmation.

Liability: any and all liability of PropertyMall in contract, tort (including, without limitation, negligence) or otherwise whether arising out of, in connection with or in relation to the Services or the supply or non-supply of the Services or otherwise under or in connection with the Contract.

Order Confirmation: the order confirmation provided by PropertyMall to the Client in respect of any Services to be provided by PropertyMall on these terms.

Services: any and all services provided by PropertyMall to the Client from time to time.

Special Terms: any additional or alternative terms set out in a Schedule to these terms or in any Order Confirmation.

1.2 In these terms (except where the context otherwise requires):

1.2.1 reference to "these terms" includes these terms as modified, disapplied or added to by any Special Terms, or as otherwise agreed by the parties in writing;

1.2.2 references to "clauses" and "Schedules" are to clauses of and schedules to these terms (as the case may be), and references in a Schedule to a "paragraph" is to a paragraph of that Schedule;

- 1.2.3 the index and clause headings are included for convenience only and shall not affect the interpretation of these terms;
- 1.2.4 use of the singular includes the plural and vice versa, and use of any gender includes the other genders;
- 1.2.5 any reference to persons includes natural persons, firms, partnerships, companies, corporations, associations, organisations, governments, states, foundations and trusts (in each case whether or not having separate legal personality);
- 1.2.6 the terms “subsidiary” and “holding company” have the meanings given to them by s.736 Companies Act 1985;
- 1.2.7 any reference to a statute, statutory provision or subordinate legislation (legislation) shall be construed as referring to such legislation as amended and in force from time to time and to any legislation which (either with or without modification) re-enacts, consolidates or enacts in rewritten form any such legislation; and
- 1.2.8 any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2 APPLICATION OF TERMS

- 2.1 Subject to any variation under clause 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Client purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2 No terms or conditions endorsed on, delivered with or contained in the Client's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3 These terms apply to all PropertyMall's Services and any variation to these terms and any representations about the Services shall have no effect unless expressly agreed in writing and signed by a director of the Company.
- 2.4 The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of PropertyMall which is not set out in the contract. Nothing in this condition shall exclude or limit PropertyMall liability for fraudulent misrepresentation.
- 2.5 Each order or acceptance of a quotation for Services by the Client from PropertyMall shall be deemed to be an offer by the Client to buy Services subject to these conditions.
- 2.6 Where there is any conflict or inconsistency between these terms and any Special Terms, the Special Terms shall prevail, in the following order of decreasing priority:
 - 2.6.1 Special Terms in an Order Confirmation;
 - 2.6.2 Special Terms in a Schedule to these terms; and
 - 2.6.3 these terms.

3 ORDERING PROCESS

- 3.1 No order placed by the Client shall be deemed to be accepted by PropertyMall until the Client and PropertyMall have each approved (in accordance with clause 3.2) an Order Confirmation detailing the Services to be provided and any Special Terms for

those Services, or (if earlier) PropertyMall commences the provision of the Services to the Client.

- 3.2 The Order Confirmation shall be approved by PropertyMall and the Client as follows:
 - 3.2.1 where the total Charges payable by the Client are £1,500 or less (but not otherwise), by exchange of email; or
 - 3.2.2 for any level of total Charges, by each party signing the Order Confirmation.
- 3.3 Each Order Confirmation may be signed in any number of counterparts, each of which, when signed, shall be an original, and all the counterparts together shall constitute one and the same instrument, and a party may validly sign the Order Confirmation by the signature of that party's authorised representative transmitted to the other party by fax (but not, for the avoidance of doubt, by email).
- 3.4 Each Order Confirmation agreed by the parties shall give rise to a separate Contract on these terms.

4 **AGREEMENT**

In consideration of the Client agreeing to pay the Charges in accordance with clause 5 and to comply with its other obligations under these terms, PropertyMall agrees to provide the Services in accordance with, and subject to, these terms.

5 **CHARGES**

- 5.1 In consideration of PropertyMall providing the Services, the Client shall pay PropertyMall the Charges.
- 5.2 PropertyMall shall invoice the Client for the Charges as set out in the Order Confirmation, and the Charges shall be payable:
 - 5.2.1 for any Charges specified in the Order Confirmation to be payable in advance, within 14 days after the date of the corresponding invoice or prior to commencement of the corresponding Services, whichever is the sooner; or
 - 5.2.2 for all other Charges, within 14 days after the date of the corresponding invoice.
- 5.3 All amounts payable under the Contract shall be exclusive of any applicable value added tax, consumption tax, transfer tax, sales tax or customs duty, which shall be paid by the Client at the rate and in the manner for the time being prescribed by law.
- 5.4 If the Client fails to pay any amount payable by it under the Contract, PropertyMall shall be entitled, but not obliged, to charge the Client interest on the overdue amount, payable by the Client immediately on demand, from the due date up to the date of actual payment, after as well as before judgment, at the rate of 4% per annum above the base rate for the time being of Barclays Bank plc. Such interest shall accrue on a daily basis and be compounded quarterly. PropertyMall reserves the right to claim interest and/or compensation under the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.5 In the event of any change to the scope of the Services arising from a change in the Client's requirements (or otherwise requested or agreed by the Client), PropertyMall reserves the right to make additional Charges to reflect the further work arising from that change. These Charges will be incurred at PropertyMall standard rates from time to time in force, or as otherwise agreed by PropertyMall and the Client.
- 5.6 Where any Charges are specified in the Order Confirmation to be payable in advance, then (without limitation to PropertyMall's other rights and remedies)

PropertyMall reserves the right to delay commencement of the corresponding Services until those Charges are paid in full.

6 SERVICE STANDARDS

- 6.1 PropertyMall warrants that it shall provide the Services with reasonable care and skill.
- 6.2 The warranties and conditions stated in the Contract (including in any Special Terms) are in lieu of all other warranties, conditions or other terms, whether express or implied, statutory or otherwise, all of which are expressly excluded, including, without limitation, any implied warranties or conditions as to satisfactory quality, fitness for a particular purpose or as to the use of reasonable skill and care.
- 6.3 Without limitation to clause 6.2, where PropertyMall provides advice in relation to any issue (including without limitation any advice relating to website design, search-engine optimisation or analytics) then the Client acknowledges that it is solely responsible for any action taken (or not taken) as a result of that advice, and that PropertyMall does not make any warranty or representation that the implementation or following of that advice will necessarily result in any particular outcome.

7 CLIENT'S OBLIGATIONS

- 7.1 The Client shall:
 - 7.1.1 comply with its obligations as set out in these terms and in the Order Confirmation; and
 - 7.1.2 co-operate with PropertyMall and provide PropertyMall with all such information and assistance as PropertyMall may reasonably request in order to enable or facilitate PropertyMall duly and punctually to comply with its obligations under this Agreement; and
 - 7.1.3 provide any Client Material promptly and in such format(s) as PropertyMall reasonably specifies.
 - 7.1.4 ensure that Client Material does not contain any Inappropriate Content.
- 7.2 The Client shall indemnify PropertyMall from and against all costs, claims, demands, liabilities, expenses, damages or losses (including without limitation any direct or indirect consequential losses, loss of profit and loss of reputation, and all interest, penalties and legal and other professional costs and expenses) arising out of or in connection with any breach by the Client of clause 7.1.4.

8 LIABILITY

- 8.1 Nothing in the Contract shall limit PropertyMall' Liability for:
 - 8.1.1 personal injury or death caused by its negligence; or
 - 8.1.2 fraudulent misrepresentation.
- 8.2 PropertyMall's Liability for loss or damage to any tangible property caused by the negligence of PropertyMall's employees shall be limited to a maximum amount of £2,000,000 per event or series of connected events.
- 8.3 Subject to clause 8.1, PropertyMall shall have no Liability for any of the following losses or damage (whether such losses or damage were foreseen, foreseeable, known or otherwise):
 - 8.3.1 loss of revenue, loss of actual or anticipated profits (including loss of profits on contracts), loss of the use of money, loss of anticipated savings, loss of business, loss of opportunity, loss of goodwill, loss of reputation, loss of, damage to or corruption of data; or

- 8.3.2 any indirect or consequential loss or damage howsoever caused (including, for the avoidance of doubt, whether or not such loss or damage is of a type specified in clause 8.3.1 above).
- 8.4 Subject to clauses 8.1 to 8.3 above, PropertyMall's total Liability arising out of any one event or series of connected events shall be limited to the greater of:
 - 8.4.1 £10,000;
 - 8.4.2 where the term of the Contract exceeds six months, the Charges paid or payable by the Client under that Contract during the period of six months ending on the date of that event (or first in that series of events); or
 - 8.4.3 where the term of the Contract is six months or less, the total Charges paid or payable by the Client under that Contract.

9 DURATION AND TERMINATION

- 9.1 The Contract shall come into effect on the Commencement Date and shall continue until terminated in accordance with these terms.
- 9.2 Except where a Fixed Term is specified in the Order Confirmation, either party may terminate the Contract by not less than three months' notice in writing to the other party, such notice to expire (where an Initial Term is stipulated for the Contract) on or after the last day of the Initial Term.
- 9.3 Where a Fixed Term is specified in the Order Confirmation, the Contract will terminate automatically at the end of that Fixed Term.
- 9.4 PropertyMall may give notice in writing to the Client terminating the Contract with immediate effect if any amount payable by the Client remains outstanding more than 14 days after falling due.
- 9.5 Either party may give notice in writing to the other terminating the Contract with immediate effect if:
 - 9.5.1 the other party commits any material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified of the breach; or
 - 9.5.2 if an order is made or a resolution is passed for the winding up of the other party or if an order is made for the appointment of an administrator to manage the affairs, business and property of the other party or if a receiver is appointed of any of the other party's assets or undertaking or if circumstances arise which entitle the Court or a creditor to appoint a receiver or manager or which entitle the Court to make a winding-up order or if the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.
- 9.6 Termination of the Contract however caused shall be without prejudice to any rights or liabilities accrued at the date of termination.
- 9.7 The following provisions of these terms shall survive termination: 1, 7.1.4, 7.2, 8, 9, 10, 12.1.2, 14 and 16.
- 9.8 Notice under this clause 9 may not be validly given by email.

10 CONFIDENTIALITY

- 10.1 Each party agrees and undertakes that during the term of the Contract and thereafter it will keep confidential and will not use for its own purposes nor without the prior written consent of the other party disclose to any third party (other than its

professional representatives or advisers, or as may be required by law or any legal or regulatory authority) all information of a confidential nature (including trade secrets and information of commercial value) which may become known to that party from the other party ("confidential information") unless the information is public knowledge or already known to that party at the time of disclosure or subsequently becomes public knowledge other than by breach of the Contract or subsequently comes lawfully into the possession of that party from a third party.

- 10.2 To the extent necessary to implement the provisions of the Contract each party may disclose the confidential information to those of its employees as may be reasonably necessary or desirable provided that before any such disclosure each party shall make those employees aware of its obligations of confidentiality under the Contract and shall at all times procure compliance by those employees with them.

11 DATA PROTECTION

- 11.1 Where PropertyMall processes any personal data of which the Client is a data controller, the Client agrees that PropertyMall does so as a data processor on behalf of the Client and not as a data controller, and accordingly PropertyMall agrees that it shall:

11.1.1 process that personal data only as reasonably necessary to perform the Services and comply with its other obligations under the Contract, or otherwise instructed by the Client from time to time; and

11.1.2 use reasonable endeavours to ensure that such technical and organisational measures are in place as are reasonably necessary to prevent unauthorised or unlawful processing or accidental loss, damage or destruction of that personal data having regard to the harm that might result therefrom and the nature of the data.

- 11.2 PropertyMall reserves the right to monitor all incoming and outgoing communications (including telephone and email) for quality control and training purposes.

- 11.3 PropertyMall shall comply with any applicable legislation relating to the retention or disclosure of communications data, and reserves the right (but without this imposing any obligation) to comply with any codes of practice or other voluntary requirements concerning the retention or disclosure of communications data.

- 11.4 In this clause 11, the expressions "data controller", "data processor", "personal data" and "processing" have the meanings ascribed to them by the Data Protection Act 1998.

12 INTELLECTUAL PROPERTY

- 12.1 The Client (or its licensors) shall retain the Intellectual Property Rights in any Client Material, and the Client licenses PropertyMall:

12.1.1 to use the Client Material for the purpose of providing the Services and complying with its other obligations under the Contract; and

12.1.2 to use the Client's trading name and/or logo for the purpose of identifying the Client as a client of PropertyMall in any advertising or promotional materials used by PropertyMall, both during and after the term of the Contract.

- 12.2 Subject to any specific provisions, PropertyMall licenses the Client to use the PropertyMall Material for the purpose for which that PropertyMall Material was commissioned, but for no other purpose.

- 12.3 Subject to clause 12.1, all Intellectual Property Rights in any PropertyMall Material shall belong to PropertyMall (or its licensors), and the Client shall have no right in or to PropertyMall Material save the right to use it as permitted by these terms.

- 12.4 Without limitation to clause 12.3, the Client shall not supply any PropertyMall Material to any third party (whether this would infringe any Intellectual Property Rights in that PropertyMall Material or otherwise) or allow any third party to use any PropertyMall Material.
- 12.5 Subject to clauses 12.6 and 12.7, PropertyMall shall, at its own expense, defend or, at its option, settle any action brought against the Client resulting from any third party claim or suit (a "relevant claim") alleging that the use or possession of the PropertyMall Material by the Client in accordance with these terms infringes any Intellectual Property Rights belonging to a third party in the UK.
- 12.6 PropertyMall shall have no obligation under clause 12.5 in respect of any relevant claim unless the Client:
- 12.6.1 promptly notifies PropertyMall in writing of that relevant claim;
 - 12.6.2 makes no admissions or settlements in relation to the relevant claim without PropertyMall's prior written consent;
 - 12.6.3 at PropertyMall's request and expense, allows PropertyMall complete control over any litigation relating to or settlement of the relevant claim; and
 - 12.6.4 gives PropertyMall all information and assistance as PropertyMall may reasonably require at PropertyMall' cost.
- 12.7 PropertyMall shall have no obligation under clause 12.5 to the extent that any alleged infringement arises from:
- 12.7.1 the incorporation of any Client Material into the PropertyMall Material;
 - 12.7.2 modifications made to the PropertyMall Material without PropertyMall's consent;
 - 12.7.3 use of the PropertyMall Material other than as directed or approved by PropertyMall in writing or otherwise in any manner not contemplated by this Agreement;
 - 12.7.4 any breach of any of these terms or any negligent, wilful or fraudulent act or omission of or by the Client, its officers, employees, agents or contractors.
- 12.8 Without prejudice to clause 12.5, in the event that the use or possession of any PropertyMall Material by the Client in accordance with these terms infringes or, in PropertyMall' opinion, may be held to infringe any Intellectual Property Rights belonging to a third party, PropertyMall may at its option and expense:
- 12.8.1 procure for the Client the right to continue using the PropertyMall Material free from any liability for such infringement; or
 - 12.8.2 modify or replace the PropertyMall Material so as to avoid the infringement; or
 - 12.8.3 terminate the Contract immediately on written notice and refund the Charges paid by the Client in respect of the affected Services under that Contract, less a reasonable charge for use of the PropertyMall Material to the date of termination.
- 12.9 This clause 12 states the entire obligation and Liability of PropertyMall and the sole remedy of the Client in respect of any infringement or alleged infringement of any Intellectual Property Rights arising from its acquisition, possession or use of the PropertyMall Material. All other obligations of PropertyMall in relation to any infringement or alleged infringement of the Intellectual Property Rights of any person which but for this clause 12.9 would have effect are excluded.

13 **CHANGE CONTROL**

- 13.1 For the purposes of this clause 13 a “Change Request” is:
- 13.1.1 a request to change (including to cease) any of the Services or add new services to the Services;
 - 13.1.2 a request by the Client for any modification or development to an Application.
- 13.2 A Change Request shall become a “Change Order” when the requirements of the Change Control Procedure have been satisfied and the Change Request is signed by the authorised representatives of both parties to signify their approval to the change.
- 13.3 Change Requests may be originated either by the Client or by PropertyMall.
- 13.4 Where PropertyMall originates a Change Request it shall provide, with the Change Request, details of the impact which the proposed change will have upon:
- 13.4.1 the Services and/or the Application;
 - 13.4.2 the Charges; and
 - 13.4.3 the other terms of the Contract.
- 13.5 Where the Client originates a Change Request, PropertyMall shall provide the Client, within 28 days of receiving the Change Request, details of the impact which the proposed change will have upon the items set out in clauses 13.4.1 to 13.4.3.
- 13.6 Where the Client makes a Change Request, PropertyMall reserves the right to suspend the provision of any part of the Services that PropertyMall reasonably believes would subsequently be made redundant by the approval of the Change Request under this clause 13.
- 13.7 Neither party shall be obliged to agree a Change Request originated by the other, but if either party is unwilling to accept a Change Request suggested by the other (or any term of any proposed Change Order) then the other party may require the disagreement to be dealt with in accordance with the dispute resolution procedure set out in clause 15.

14 **NOTICES**

- 14.1 Any notice or other communication given under the Contract shall be in writing and shall be served by one of the following methods:
- 14.1.1 delivering it personally;
 - 14.1.2 sending it by first-class registered post or by registered airmail; or
 - 14.1.3 by fax;
- to the address and for the attention of the relevant party set out in the Order Confirmation (or as otherwise notified by that party to the other party from time to time).
- 14.2 Subject to clause 14.3, any such notice or other communication shall be deemed to have been received:
- 14.2.1 if delivered personally, at the time of delivery;
 - 14.2.2 in the case of first-class registered post, 48 hours from the time of posting;
 - 14.2.3 in the case of registered airmail, 72 hours from the time of posting;

14.2.4 in the case of fax, at the time of transmission; and

14.3 If deemed receipt under clause 14.2 occurs other than between the hours of 9am and 5pm (at the recipient's local time) on a Business Day, then the notice shall be deemed to be received at 9am on the next Business Day, where "Business Day" means any day which is not a Saturday, a Sunday or a public holiday in the place at or to which the notice is left or sent.

14.4 Any notice or other communication given under any clause that expressly excludes service of such notice by email (including without limitation clause 9) shall not be validly served if sent by email.

15 DISPUTE RESOLUTION

15.1 If any dispute arises out of or in connection with the Contract, then (subject to clause 15.2):

15.1.1 the parties shall attempt to settle it by negotiation between the parties' representatives with day-to-day responsibility for the Contract;

15.1.2 if those representatives are unable to resolve the dispute within a reasonable time, then the dispute may be referred by either party to the managing directors of each party, who shall then attempt to settle it by negotiation; and

15.1.3 if the managing directors are unable to resolve the dispute, then the parties shall attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure.

15.2 For the avoidance of doubt, nothing in this clause 15 shall exclude or limit the right of PropertyMall to take any action (including without limitation bringing any court proceedings) to secure payment of any sum of money overdue for payment by the Client to PropertyMall.

16 GENERAL

16.1 **Entire Agreement:** The Contract (including the Order Confirmation) constitutes the entire understanding between the parties with respect to the subject matter of the Contract and supersedes all prior agreements, negotiations and discussions between the parties relating to it.

16.2 **Force Majeure:** PropertyMall shall not be liable to Client for any failure to perform any of its obligations under these Terms if and to the extent that such failure is caused by any circumstance or event beyond the control of PropertyMall, including (without limitation) act of God, war, insurrection, riot, civil disturbance, acts of terrorism, fire, explosion, theft, malicious damage, strike, lock-out, third party injunction, national defence requirements, or acts or regulations of national or local governments or illness of employees of PropertyMall.

16.3 **Amendments:** Save as expressly provided in the Contract, no amendment or variation of the Contract shall be effective unless in writing and signed by a duly authorised representative of each of the parties to it.

16.4 **Assignment:**

16.4.1 Save as provided in clause 16.4.2, neither party shall assign, transfer, charge or deal in any other manner with the benefit and burden of the Contract, or purport to do so, without the prior written consent of the other party (not to be unreasonably withheld).

16.4.2 PropertyMall may assign or transfer the benefit and burden of this Contract to (i) any person to which it transfers the whole or any substantial part of its

business; or (ii) to any company which is either a holding company of PropertyMall, or a subsidiary or a subsidiary of any such holding company.

- 16.5 **Waiver:** The failure of a party to exercise or enforce any right under the Contract shall not be deemed to be a waiver of that right nor operate to bar the exercise or enforcement of it at any time or times thereafter.
- 16.6 **Severability:**
- 16.6.1 If any provision of the Contract shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of the Contract which shall remain in full force and effect.
- 16.6.2 If any provision of the Contract is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it valid and enforceable.
- 16.7 **Rights of Third Parties:** A person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 16.8 **Governing Law and Jurisdiction:** The Contract shall be governed by and construed in accordance with English law and each party hereby irrevocably submits to the exclusive jurisdiction of the English Courts.

SCHEDULE ONE

Special Terms for Advertising Services

The following Special Terms shall apply where the Services include any advertising services (as specified in the Order Confirmation):

1 PROVISION AND APPROVAL OF CONTENT

- 1.1 The Client shall supply the content (including text and corporate logo) for the advertisements in electronic format as soon as reasonably practicable after the Order Confirmation has been agreed.
- 1.2 PropertyMall shall have the right at any time to reject or remove any advertisement for any reason. PropertyMall shall give written notice to the Client within a reasonable time after any such rejection or removal, and the Client may submit a replacement advertisement to PropertyMall. PropertyMall may modify the size or format of advertisements to comply with the layout and technical requirements of its websites.
- 1.3 If the Client requests that the content (text and corporate logo) for the advertisement be changed, PropertyMall shall use reasonable endeavours to make the requested changes, subject to the Client agreeing to pay PropertyMall's reasonable charges for making those changes.

2 EXTENSIONS OR RENEWALS

While PropertyMall will endeavour to accommodate any request from the Client for an extension or renewal of the term of the Contract at the end of the Fixed Term, PropertyMall cannot guarantee that the same advertising position will be available to the Client after the Fixed Term.

3 STATISTICS

PropertyMall will use reasonable endeavours to ensure that all statistics provided by PropertyMall are reasonably accurate, including statistics regarding visits to the Client's website via click-through from the advertising, but the Client acknowledges that technical errors or spurious results can occur, and PropertyMall gives no warranty of the accuracy of any such statistics.

4 LIABILITY

Subject to clause 8.1, but without limitation to the other provisions of clause 8, the Client acknowledges that PropertyMall makes no warranty, representation or undertaking, and will have no Liability, in respect of any of the following:

- 4.1 the number of visitors or visits to the Client's website as a result of the advertising; or
- 4.2 the effect of the advertising on the position of the Client's website in the results of searches in search engines.
- 4.3 the actual or perceived effectiveness or success of the Client's advertising.

SCHEDULE TWO

Special Terms for Website Design and Development Services

The following Special Terms shall apply where the Services include any website design and development services (as specified in the Order Confirmation):

1 CHARGES

The charges shall be as set out in the Order Confirmation, and shall be payable (in accordance with clause 5) as follows:

- 1.1 50% upon signature by the Client of the Order Confirmation; and
- 1.2 50% upon Completion (as defined in paragraph 2.3) in accordance with the terms set out in the following provisions of this Schedule.

2 COMPLETION TESTS

- 2.1 Once PropertyMall has completed the design and development of the Site in accordance with the Specification, PropertyMall shall run the completion tests set out in paragraph 2.2 (the "Completion Tests"). The procedure set out in this paragraph 2 shall be repeated in respect of each phase of the development of the Site (where this is done in more than one phase) and any further development works agreed by the parties from time to time.
- 2.2 The Completion Tests shall test compliance of the Site with the Specification and will consist of the following parts:
 - 2.2.1 *Completeness and accuracy* – are all Client materials in the Site; is the navigation according to the specification; do all technical features and modules work well.
 - 2.2.2 *Usability* – is the Site compatible with the leading browsers; does it download quickly; and if appropriate: is it able to adapt to different screen settings;
 - 2.2.3 *Accessibility* – is the Site accessible by all main browsers and by people with sight problems who use special browsers that convert written text into sound;
 - 2.2.4 *Design* – is the design of the Site in accordance with the Specification.
- 2.3 Completion of the Site ("Completion") shall occur when the Site has passed the Completion Tests. PropertyMall shall notify the Client when the tests have been passed and provide the results of the Completion Tests to the Client in writing.
- 2.4 If any failure to pass the Completion Tests results from a defect which is caused by an act or omission of the Client, or by one of the Client's sub-contractors or agents for whom PropertyMall has no responsibility ("Non-PropertyMall Defect"), the Site shall be deemed to have passed the Completion Tests notwithstanding such Non-PropertyMall Defect. PropertyMall shall provide assistance reasonably requested by the Client in remedying any Non-PropertyMall Defect by supplying additional services or products. The Client shall pay PropertyMall in full for all such additional services and products at PropertyMall's then current fees and prices.
- 2.5 Completion of the Site shall be deemed to have taken place upon the occurrence of any of the following events:
 - 2.5.1 the Client uses any part of the Site for any commercial purpose or to provide any information or services to third parties other than for test purposes; or

- 2.5.2 the Client unreasonably delays the start of the relevant Completion Tests or any retests for a period of seven days from the date on which PropertyMall is ready to commence running such Completion Tests or retests.

3 **WARRANTY**

- 3.1 PropertyMall warrants that the Site will perform substantially in accordance with the Specification for a period of three months from Completion.
- 3.2 If the Site does not perform as specified in paragraph 3.1, PropertyMall shall, for no additional charge, carry out any work necessary in order to ensure that the Site substantially complies with the Site Specification or endeavour to find another technical solution.
- 3.3 The warranty set out in paragraph 3.1 and PropertyMall's obligations under paragraph 3.2 shall not apply to the extent that any failure of the Site to perform substantially in accordance with the Site Specification is caused by any Client Material or by any other act or omission of the Client.
- 3.4 Paragraph 3.2 sets out the Client's sole remedy and PropertyMall's entire Liability in respect of any breach by PropertyMall of the warranty set out in paragraph 3.1.

4 **INTELLECTUAL PROPERTY RIGHTS**

- 4.1 The licence granted to the Client in clause 12.2 shall apply subject to the following restrictions:
 - 4.1.1 in respect of Applications developed by PropertyMall for the Client, the Client shall only release the code for those Applications to a third party for the purposes of hosting and maintenance of the Site by that third party;
 - 4.1.2 in respect of any Application identified in the Specification (or otherwise notified by PropertyMall to the Client) as being pre-existing modules developed by PropertyMall other than for the Client, the Client may use that Application only while that Application is hosted by PropertyMall, and may not release the code of that Application to any third party at any time for any reason; and
 - 4.1.3 where any Application is compiled from source code that is not hosted as part of the Site, the Client is not granted any licence in respect of the source code and is not entitled to any copy of the source code, save as otherwise agreed in writing by PropertyMall.
- 4.2 PropertyMall shall at the request of the Client supply a copy of the Site (other than any Materials to which paragraphs 4.1.2 or 4.1.3 apply) to the Client on CD-ROM or USB memory device following Completion of the Site.

5 **SEARCH ENGINE OPTIMISATION**

- 5.1 Where the Services include search engine optimisation ("SEO"), PropertyMall shall use all reasonable endeavours to optimise the Site for the three leading search engines as reasonably determined from time to time (currently Google, Yahoo! and MSN) using generally accepted industry standards for such optimisation.
- 5.2 The Client acknowledges that:
 - 5.2.1 no particular outcome (and in particular, without limitation, no particular level of ranking on any search engine) can be guaranteed by means of SEO;
 - 5.2.2 any changes to the content on the Site subsequent to the SEO being carried out may adversely impact the search ranking of the Site; and

further use of SEO from time to time is advisable, to take account of changes to the Site and to search-engine technology or methodology.

SCHEDULE THREE

Special Terms for Website Hosting and Database Use Services

The following Special Terms shall apply where the Services include any website hosting services (as specified in the Order Confirmation), whether or not the Site that is being hosted has been designed by PropertyMall pursuant to the Special Terms for Website Design and Development Services set out in Schedule Two, and where the Services include any use of a Database:

1 INSTALLATION

PropertyMall shall install the Client's site as specified in the Order Confirmation (the "Site") on to the Server:

- 1.1 in the case of Sites developed or customised by PropertyMall, as accepted (or deemed to be accepted) pursuant to the relevant Website Design & Development Service Schedule; or
- 1.2 otherwise, as supplied by the Client to PropertyMall (either electronically or by CD-ROM, as agreed by PropertyMall and the Client), and PropertyMall shall make such technical modifications to the Site as it deems necessary or desirable for this purpose.

2 PROVISION OF SERVICES

The Services are provided by PropertyMall for the exclusive use of the Client for the Client's own business purposes. The Client shall not resell (or otherwise transfer or share the benefit of) any of the Services to any third party, and in particular (without limitation) shall not use the Services to provide:

- 2.1 website hosting services to any other person; or
- 2.2 email transmission or reception services to any other person (other than the Client's personnel for the purposes of the Client's business).

3 CONTENT

- 3.1 PropertyMall shall grant the Client access to a "preview server" on which the Site is hosted and to which the Client, if so arranged by PropertyMall at the Client's request, can upload changes to the Site and test the Site. The Client can either ask for an automatic upload to the "public-facing server" or PropertyMall can make that upload upon request from the Client.
- 3.2 The Client acknowledges that PropertyMall does not operate or exercise any control over, and accepts no responsibility for, the content of the Site (including without limitation material originating from visitors to the Site and any material uploaded on to the Site by PropertyMall on behalf of the Client). The Client is solely responsible for the accuracy, legality, and compliance with the relevant rules and regulations of all content on the Site.
- 3.3 PropertyMall shall notify the Client promptly if it becomes aware of any allegation that any content on the Site may be Inappropriate Content.
- 3.4 Without limitation to clause 7 of the Standard Terms, the Client shall indemnify PropertyMall from and against all costs, claims, demands, liabilities, expenses, damages or losses (including without limitation any direct or indirect consequential losses, loss of profit and loss of reputation, and all interest, penalties and legal and other professional costs and expenses) arising out of any allegation that the Site contains any Inappropriate Content.

- 3.5 Without limitation to clause 3.2, where PropertyMall reasonably considers any content to be Inappropriate Content, or a third party alleges that the Site contains Inappropriate Content, then PropertyMall may (without prior notice to the Client and without liability) do any of the following as it considers appropriate:
- 3.5.1 remove the Inappropriate Content from the Site; or
 - 3.5.2 suspend the availability of the Site, or of any pages on the Site containing Inappropriate Content.
- 3.6 PropertyMall may include on every page of the Site the statement “Designed by PropertyMall Limited” (where applicable) or “Powered by PropertyMall Limited”, or “Powered by PropertyMall.com”, with a hyperlink to PropertyMall.com or a webpage in it.

4 DATA FEEDS

- 4.1 The following provisions apply in respect of any RSS, XML or other data feed (“Feed”) used or provided by PropertyMall on the Site or otherwise on behalf of the Client, including without limitation any Feed that is:
- 4.1.1 made available from the Site to a website or database operated by a third-party or by PropertyMall;
 - 4.1.2 taken from a website or database operated by a third-party or by PropertyMall and used as the basis for Content on the Site; or
 - 4.1.3 taken from a website or database operated by a third party and used on behalf of the Client on a website or database operated by PropertyMall.
- 4.2 PropertyMall shall use reasonable endeavours to ensure all Feeds provide the intended functionality, including liaising where necessary with the operators of external websites or databases or the suppliers of third-party software (in each case where reasonably practicable to do so, and subject to the cooperation of those third parties).
- 4.3 However, the Client acknowledges that the proper functioning of any Feed is dependent both on the Site and on external systems beyond the control of PropertyMall, including without limitation web browsers and other software, and external databases or websites operated by third parties, and hence that PropertyMall has no liability for any failure of any Feed to function as intended, save to the extent this arises from any non-compliance by PropertyMall with its obligations under paragraph 4.2.

5 SEARCH ENGINE OPTIMISATION

- 5.1 Where the Services include search engine optimisation (“SEO”), PropertyMall shall use all reasonable endeavours to optimise the Site for the three leading search engines as reasonably determined from time to time (currently Google, Yahoo! and MSN) using generally accepted industry standards for such optimisation.
- 5.2 The Client acknowledges that:
- 5.2.1 no particular outcome (and in particular, without limitation, no particular level of ranking on any search engine) can be guaranteed by means of SEO;
 - 5.2.2 any changes to the content on the Site subsequent to the SEO being carried out may adversely impact the search ranking of the Site; and
 - 5.2.3 further use of SEO from time to time is advisable, to take account of changes to the Site and to search-engine technology or methodology.

6 STORAGE AND BANDWIDTH LIMITS

- 6.1 The Site (including any Client Data, as defined in paragraph 7) shall not use more than 50 megabytes of storage capacity at any time.
- 6.2 The Site is subject to a bandwidth limit of five gigabytes (5,000 megabytes) of data transfer (uploading and downloading) each month.
- 6.3 If the above limits are exceeded at any time, then PropertyMall may make additional charges in accordance with its standard rates in force from time to time for such excess usage, and the Client shall pay those charges promptly on demand.

7 DATABASE USE

- 7.1 The following provisions shall apply in respect of any Site designed or developed or hosted by PropertyMall that contains elements requiring the use of a server-side database (a "Database"), including without limitation a Site containing any of the following modules: "Property Listing Database"; "Product Catalogue"; or "Recruitment and Jobs", "Events", "Auctions Calendar", or "News".
- 7.2 Each Database shall consist of software that is hosted on one of PropertyMall's servers, and PropertyMall shall provide access for the Client to upload relevant information ("Client Data") on to the Database and to display that Client Data on the Site.
- 7.3 The Database may be shared between the Client and other clients of PropertyMall, but:
 - 7.3.1 PropertyMall shall not make the Client Data available to other clients unless the Client agrees otherwise in writing; and
 - 7.3.2 data belonging to any of those other clients shall not be made available to the Client, unless that other client agrees otherwise.
- 7.4 The Client shall:
 - 7.4.1 enter only appropriate data (as reasonably determined by PropertyMall) in the database;
 - 7.4.2 use all reasonable endeavours to ensure that passwords, access codes etc. are treated with confidentiality within the Client's organisation and not to make these available to any third party without the prior approval in writing of PropertyMall. The Client shall notify PropertyMall immediately if any such confidentiality has been compromised;
 - 7.4.3 notify PropertyMall immediately if the Client becomes aware of any malfunction or faulty data in the database;
 - 7.4.4 not allow third parties to upload data onto the database or display data from the database without the consent of PropertyMall in writing; and
 - 7.4.5 ensure that all processing of Client Data complies with the Data Protection Act 1998 and any other applicable data protection legislation.

8 SERVICE STANDARDS

- 8.1 Subject to the following provisions of this paragraph 8, PropertyMall shall endeavour to ensure that the Site attains not less than 99.5% availability over the course of each calendar month.
- 8.2 The following shall not constitute "unavailability" for the purposes of calculating the availability of the Site under paragraph 8.1

- 8.2.1 any period of downtime of the Site between the hours of 6 pm to 8 am GMT Monday to Friday or any time on Saturday or Sunday, or where PropertyMall has given the Client at least seven days prior notice by email of that downtime;
- 8.2.2 any unavailability of the Site arising from circumstances beyond the reasonable control of PropertyMall (including issues relating to the overall performance of the internet); or
- 8.2.3 any unavailability of the Site arising from any “denial of service” attack or other criminal, malicious or abusive activity by any third party.

9 DOMAIN NAMES

Where PropertyMall registers any internet domain name (each a “Domain Name”) on behalf of the Client:

- 9.1 PropertyMall may require payment in advance from the Client in respect of the fees payable for that registration;
- 9.2 PropertyMall shall endeavour to register the Domain Name within a reasonable time, but PropertyMall shall not be liable for any unavailability of any Domain Name whether arising from any delay in registration or otherwise;
- 9.3 the registration and renewal fees specified by PropertyMall from time to time are subject to any variations in the local charge made by the registry for the particular Domain Name;
- 9.4 the Domain Name will be hosted on PropertyMall’s domain name server (DNS) unless stated otherwise in the Specification;
- 9.5 subject to paragraph 9.6, PropertyMall shall be set up as the billing and technical (or equivalent) contacts by default on all newly registered Domain Names and on all Domain Names transferred to our DNS;
- 9.6 PropertyMall may at any time at its sole discretion transfer the billing and technical (or equivalent) contacts to the Client (or as the Client shall otherwise) direct and/or remove any Domain Name from its DNS;
- 9.7 while PropertyMall shall endeavour to inform the Client of upcoming renewal requirements, the Client is exclusively responsible for ensuring that any necessary renewal charges are paid in a timely manner;
- 9.8 PropertyMall has no obligation to renew any registration of a Domain Name until it has received full payment in cleared funds of the corresponding renewal charges;
- 9.9 the Client agrees to be bound by all present and future applicable terms and conditions, specifications, procedures, rules and policies of the relevant naming authorities for each Domain Name;
- 9.10 without limitation to paragraph 9.9, where PropertyMall registers any ‘.uk’ Domain Name on behalf of the Client, then the Client:
 - 9.10.1 authorises PropertyMall (i) to enter the Client into a contract with Nominet UK on the then-current UK terms and conditions for the registration of .uk domain names; and (ii) to act on the Client’s behalf in connection with the administration of the Domain Name registration for the duration of the registration; and
 - 9.10.2 agrees to be bound by Nominet UK’s Terms and Conditions in force from time to time (the current version of which can be found on the website of Nominet UK at

<http://www.nominet.org.uk/ReferenceDocuments/TermsAndConditions>), including without limitation those terms dealing with the use and disclosure of personal data, and Nominet's rights to cancel, suspend, detag or otherwise change the status of any domain name if any of those terms are not complied with; and

- 9.11 the Client shall indemnify PropertyMall from and against all costs, claims, demands, liabilities, expenses, damages or losses (including without limitation any direct or indirect consequential losses, loss of profit and loss of reputation, and all interest, penalties and legal and other professional costs and expenses) arising out of or in connection with the registration of the Domain Name, including without limitation any claim that the Domain Name infringes the trade mark rights or other rights of any third party.

10 **TRANSFER ON TERMINATION**

- 10.1 Upon any termination of the Contract for any reason:
- 10.1.1 the Client may at any time up to termination or until 28 days after termination request the transfer of the Site to another host (the "New Provider") by notice in writing;
 - 10.1.2 the Client shall pay PropertyMall the sum of fifty pounds (£50) excluding VAT as an administrative charge for the transfer of the Site, payable upon making the request under paragraph 10.1.1; and
 - 10.1.3 subject to any licensing restrictions relating to material originated by PropertyMall, PropertyMall shall transfer the Site to the New Provider within 14 days after the Client has complied with both paragraph 10.1.1 and paragraph 10.1.2.
- 10.2 It is the responsibility of the Client to ensure that any request for a transfer of the Site under clause 10.1 is made in sufficient time for the transfer to be completed prior to termination. Any continued availability of the Site after the termination date pending any transfer shall be at the sole discretion of PropertyMall, and subject to the Client paying PropertyMall fees for such continued availability at PropertyMall's standard rates then in force.

SCHEDULE FOUR

Special Terms for Website Analytics Services

The following Special Terms shall apply where the Services include any website analytics services (as specified in the Order Confirmation), whether or not the site in respect of which those services are being provided (the "Site") is being hosted by PropertyMall:

1 LEVELS OF SERVICE

- 1.1 PropertyMall provides three levels ("Levels") for these Services: "Standard", "Advanced" and "Customised".
- 1.2 The Level applicable to this agreement will be as stated in the Order Confirmation (and if no Level is so stated, then the applicable Level shall be "Standard").

2 SPECIFICATION AND CUSTOMISATION

- 2.1 For the Advanced and Customised Levels:
 - 2.1.1 PropertyMall shall provide the customisation and specification services set out in the Order Confirmation;
 - 2.1.2 pursuant to those services, PropertyMall and the Client shall agree a specification ("Specification") for the remaining Services to be provided under this schedule; and
 - 2.1.3 if the parties are unable to agree on a Specification within a reasonable period of time, then either party may terminate the Services under this schedule by not less than seven days' notice in writing to the other, with no further obligation of either party to the other (save for any obligation of the Client to pay accrued Charges in respect of the Services provided up to such termination).
- 2.2 For Standard Level, no customisation is required, and (save as set out in the Order Confirmation) any customisation the Client requests at this Level shall be the subject of a separate quotation by PropertyMall.

3 INSTALLATION

- 3.1 Where PropertyMall hosts the Site (but subject to clause 3.2), PropertyMall shall carry out the additions of coding and other changes necessary to enable the Services on the Site ("Coding"), and the Client consents to PropertyMall accessing and editing the Site for the purposes of the Coding.
- 3.2 Where PropertyMall does not host the Site, or where the Client so requests in respect of a Site that is hosted by PropertyMall, then:
 - 3.2.1 PropertyMall shall provide details of the Coding to the Client (or to the Client's hosting provider), and shall provide reasonable assistance to the Client (or the Client's hosting provider) in respect of the Coding; but
 - 3.2.2 PropertyMall shall have no liability to the Client in respect of any loss or damage to the Client or the Client's hosting provider arising from the carrying out of that Coding, save where for loss or damage that arises directly from the negligence of PropertyMall.
- 3.3 For the Advanced and Customised Levels:
 - 3.3.1 PropertyMall shall create templates for any reports and other functionality specified in the Specification;

- 3.3.2 following the creation of those templates, PropertyMall shall make those templates available to the Client for review; and
- 3.3.3 if the Client requires changes to be made to any of those templates, then PropertyMall shall not charge for any changes that are necessary to correct non-compliance with the Specification, but PropertyMall reserves the right to make an additional charge in respect of any other changes, including requests for additional features not included in the Specification.

4 CLIENT'S ASSISTANCE

The Client agrees to provide all cooperation and assistance reasonably requested by PropertyMall to enable the completion of the specification, customisation and installation services set out in paragraphs 2 and 3.

5 REPORTING

- 5.1 PropertyMall shall make available to the Client website reporting facilities which will give the Client online access to the website visitor statistics and other information to be provided pursuant to this schedule ("Analytics Information"), as set out in the Order Confirmation and/or the Specification.
- 5.2 For the Advanced and Customised Levels, the Client shall be entitled to additional personal/telephone reporting and analysis as set out in the Order Confirmation and/or the Specification.

6 ALTERATIONS TO THE SERVICES

- 6.1 PropertyMall may make changes to the Services from time to time, including without limitation:
 - 6.1.1 for the purposes of maintenance and updates to the Services;
 - 6.1.2 to take account of changes in the underlying technology used in the provision of the Services;
 - 6.1.3 to take account of changes in applicable standards and good practice for website-related coding; or
 - 6.1.4 to comply with data protection requirements and good practice in respect of visitor tracking and website analytics.
- 6.2 PropertyMall shall use all reasonable endeavours to ensure that any such changes do not result in a material reduction or alteration in the Analytics Information provided to the Client.
- 6.3 For the Standard Level only, where the Site generates in excess of one million page views in any month, then PropertyMall reserves the right to suspend provision of the Services pending agreement with the Client for a change of applicable Level to Advanced or Customised (as the case may be). If the parties are unable to reach agreement within a reasonable time then either party may terminate this agreement without liability to the other (save for any obligation of the Client to pay accrued Charges in respect of the Services provided up to such termination).
- 6.4 The provisions of clauses 3 and 4 shall apply in respect of any changes that are required pursuant to this clause 6 to the coding by which the Services are enabled on the Site.

7 SERVICE STANDARDS

- 7.1 PropertyMall shall endeavour to ensure the statistics and analysis ("Analytics Information") made available under this schedule are reasonably accurate.

7.2 However, the Client acknowledges that the accuracy of all such Analytics Information is dependent on factors beyond PropertyMall's control (including without limitation the configuration and performance of Site users' computer systems).

7.3 Accordingly, PropertyMall excludes all Liability for any direct or indirect loss or damage suffered by the Client as a result of any unavailability, degradation or inaccuracy of any Analytics Information.

8 DATA PROTECTION

8.1 The parties acknowledge that the Client shall be the data controller of any personal data relating to visitors that is collected by means of the Services ("Visitor Data"), and the provisions of clause 11 of PropertyMall's terms shall apply in respect of the Visitor Data.

8.2 The Client shall ensure that the Site includes a privacy policy that sets out clear information relating to the collection and use of Visitor Data, including details of any use of "cookies" in relation to the Services. PropertyMall shall provide reasonable assistance and information to the Client in respect of such information, but the Client acknowledges that it is solely responsible for the terms of any such privacy policy.