TERMS AND CONDITIONS

HSS MANAGEMENT SOFTWARE SERVICE

1.   TERMS AND CONDITIONS

These are the Terms and Conditions for

EEF LIMITED trading as Make UK ("Make UK") incorporated and registered in England and Wales (company number 05950172) whose registered office is at Broadway House, Tothill Street, London, SW1H 9NQ

1.1   ("**Supplier")** in relation the provision of its Services.

1.2   These Terms and Conditions form part of the End User Licence Agreement between the Supplier and the Customer in relation to the provision of such Services.

2.   INTERPRETATION

2.1   The following definitions and rules of interpretation apply to this Agreement.

2.2   Unless the context otherwise requires, words and expressions defined in the Service Order Form shall have the same meanings and:

This Agreement: the End User Licence Agreement between the Supplier and the Customer.

Available Services: the Implementation Services, Hosting Services and/or Maintenance and Support Services.

Business Day: any day which is not a Saturday, Sunday or public holiday in the UK.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clauses 12.5 and 12.6.

Configuration: The configuration of the Software as specified in a Service Order Form or in section 1 of the Special Conditions (as applicable).

Contract Start Date: the date that the customer signs this Agreement.

Customer Account Team: the individuals appointed by the Customer from time to time who shall serve as the Supplier's primary contacts for the Supplier's activities under this Agreement.

Customer Data: the data inputted into the information fields of the Software by the Customer, by Named Users, or by the Supplier on the Customer's behalf.

Customer's Project Manager: the member of the Customer Account Team appointed in accordance with Clause 7.2.

Data Compliance Schedule: the data compliance schedule set out in part 4 of the Schedule to this Agreement.

Data Protection Legislation: has the meaning given to that term in the Data Compliance Schedule.

Fees: the fees payable to the Supplier, as described in a Service Order Form.

Hosting Services: the services that the Supplier provides to allow the Customer to access and use the Software as described in Clause 5.1.

Implementation Services: the work the Supplier will perform to implement the Software and provide training, as set out in section 2 of the Special Conditions.

Initial Term: the initial term specified in the applicable Service Order Form.

Maintenance and Support: any error corrections, updates and upgrades that the Supplier may provide or perform with respect to the Software and Hosting Services, all as described in clause 5.7.

Named Users: those specific employees and independent contractors or other authorised third parties (up to the total number of Named User licences specified in the Service Order Form) who are authorised to use the Software under this Agreement.

Normal Business Hours: 8.30 am to 5.00 pm local UK time, each Business Day.

Renewal Period: the renewal period set out in the applicable Service Order Form.

Service Level Arrangements: the service level arrangements set out in Clause 5.13.

Service Order Form: the service order form, agreed in accordance with clause 4.1, describing the Services to be provided by the Supplier and the related matters listed in the original Service Order Form set out in part 1 of the Schedule to this Agreement.

Services: the Available Services which are provided by the Supplier under a Service Order Form.

Services Start Date: has the meaning given in clause 3.5.

Software: the Supplier's proprietary software in machine-readable object code form, including any error corrections, updates, upgrades, modifications and enhancements to it provided to the Customer under this Agreement.

Special Conditions: the special conditions set out in part 3 of the Schedule to this Agreement (if any).

Supplier Account Team: the individuals appointed by the Supplier from time to time who shall serve as the Customer's primary contacts for the Customer's activities under this Agreement.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

Year: a period of twelve calendar months commencing on the applicable Services Start Date or on any anniversary thereof.

2.3 References to clauses are to the clauses of these Terms and Conditions.

2.4 Clause and paragraph headings shall not affect the interpretation of this Agreement.

2.5 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality), and a **company** includes any company, corporation or other body corporate, wherever and however incorporated or established.

2.6 Unless the context otherwise requires, words in the singular shall include the plural, words in the plural include the singular, and a reference to one gender shall include a reference to the other genders.

2.7 A reference to **writing** or **written** includes faxes and email.

2.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

2.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

2.10 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2.11 In the event of an inconsistency between the main body of the Agreement and the Schedule to this Agreement and/or between the provisions of the parts of the Schedule to this Agreement, the following order of priority shall apply: (i) the main body; (ii) the applicable Service Order Form(s); (iii) the Special Conditions (if any); and (iv) these Terms and Conditions.

2.12 These Terms and Conditions shall apply to the supply of all Services except where application to one or the other is specified.

2.13 The Special Conditions shall apply to the Services to be carried out under the original Service Order Form only, unless expressly stated otherwise in the applicable Service Order Form.

3. COMMENCEMENT AND DURATION

3.1 This Agreement shall commence on the Contract Start Date and shall continue, unless and until either party gives to the other party written notice to terminate. Such notice shall expire on the expiry of all Service Order Forms entered into before the date on which it is served.

3.2 If there are no ongoing Service Order Forms as at the date notice to terminate is served under clause 3.1,

such notice shall terminate this Agreement with immediate effect.

3.3 The parties shall not enter into any further Service Order Forms after the date on which notice to terminate is served under clause 3.1.

3.4 The Customer may procure any of the Available Services by agreeing a Service Order Form with the Supplier pursuant to clause 4.1

3.5 The Supplier shall provide the Services from the date specified in the relevant Service Order Form (**Services Start Date**) and shall continue to provide such Services for the duration of the Initial Term and each subsequent Renewal Period specified in the applicable Service Order Form, unless and until:

(a) this Agreement is terminated in accordance with its terms; or

(b) either party gives not less than 90 days' written notice to terminate the applicable Service Order Form, in which case the Service Order Form will terminate automatically at the end of the Initial Term (or the relevant Renewal Period).

3.6 For avoidance of doubt there is no option to terminate a Service Order Form for convenience during the Initial Term. A multi year Service Order Form will exist for the full Initial Term. Additionally if the Service Order Form renews in accordance with clause 3.5, there is no option to terminate for convenience during the Renewal Period. Termination under clause 16.1 or any other provision of this Agreement is not affected.

4. **SERVICE ORDER FORMS**

4.1 Each Service Order Form shall be agreed in the following manner:

(a) the Customer shall ask the Supplier to provide any or all of the Available Services and provide the Supplier with as much information as the Supplier reasonably requests in order to prepare a draft Service Order Form for the Available Services requested;

(b) following receipt of the information requested from the Customer, the Supplier shall provide the Customer with a draft Service Order Form;

(c) the Customer shall complete the Service Order Form, sign and return it to the Supplier;

(d) the Supplier shall review and, once agreed, countersign the Service Order Form.

4.2 Once a Service Order Form has been agreed and signed in accordance with clause 4.1, no amendment shall be made to it except in accordance with clause 20.2.

4.3 Each Service Order Form shall be part of this Agreement and shall not form a separate contract to it.

5. **SUPPLIER'S OBLIGATIONS**

LICENCE

5.1 The Supplier hereby grants a non-exclusive, non-transferable licence to the Customer, on and subject to the terms and conditions of this Agreement, to allow any Named Users (up to the total number of Named User licences specified in the Service Order Form) to access the Software through Hosting Services that conform to International Standard on Assurance Engagements (ISAE) No. 3402 devised by the International Auditing and Assurance Standards Board, and to use the Software solely for the Customer's business purposes.

SOFTWARE

5.2 The Supplier undertakes that the Software will operate substantially in accordance with this Agreement and that the Services will be performed with reasonable skill and care.

5.3 The undertaking in clause 5.2 shall not apply to the extent of any non-conformance which is caused by use of the Software contrary to the Supplier's instructions or modification or alteration of the Software by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Software does not conform with the foregoing warranty, the Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 5.2.

5.4 Notwithstanding the foregoing, the Supplier:

(a) does not warrant that the Customer's use of the Software and the Services will be uninterrupted or error-free.

(b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other

problems inherent in the use of such communications facilities.

5.5 This Agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing materials, products or services which are similar to those provided under this Agreement.

MAINTENANCE AND SUPPORT SERVICES

5.6 The Supplier shall use commercially reasonable endeavours to make the Services (other than the Implementation Services, and technical support which is separately specified below) available 24 hours a day, seven days a week, and to ensure that:

(a) planned maintenance; and

(b) unscheduled maintenance, provided that the Supplier has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance,

of the hosting equipment, facility, Software or other aspects of the Hosting Services that may require interruption of the Hosting Services (**Maintenance Events**) are not performed during Normal Business Hours.

5.7 Maintenance includes all regularly scheduled error corrections, software updates and upgrades limited to improvements to features described in the Service Order Form and/or in the Special Conditions. Support for additional features developed by the Supplier, may be purchased separately at the Supplier's then current rates.

5.8 The Supplier shall maintain and update the Software. Should the Customer determine that the Software includes a defect, the Customer may at any time file error reports. During maintenance periods, the Supplier may, at its discretion, upgrade versions, install error corrections and apply patches to the hosted systems. The Supplier shall use all reasonable endeavours to avoid unscheduled downtime for Software maintenance.

5.9 The Supplier shall provide the Customer with technical support services. The Customer personnel named as Customer Support Representatives (**CSRs**) shall be authorised to contact the Supplier for technical support services. The Supplier shall provide technical support services only to that specified set of CSRs.

5.10 Supplier technical support shall accept voicemail and e-mail incident submittal from CSRs 24 hours a day, 7 days a week. The Supplier technical support call centre shall accept calls for English language telephone support during Normal Business Hours within Business Days. The Supplier shall use reasonable endeavours to process support requests, issue trouble ticket tracking numbers if necessary, determine the source of the problem and respond to the Customer during the same Business Day, with a typical daytime response within 24 hours.

5.11 The Supplier shall provide monitoring of its Hosting Services 24 hours a day seven days a week. The Supplier shall notify the CSRs of Maintenance Events (as defined in clause 5.6(b)) that may affect the availability of the Hosting Services via status.shesoftware.com.

SERVICE LEVELS

5.12 The Service Level Arrangements described in clause 5.13 shall apply with effect from the date the Implementation Services have been satisfactorily completed.

5.13 The Supplier shall use its reasonable commercial endeavours to provide availability of at least 99.9% on average over any 30 day period. Availability does not include Maintenance Events as described in clause 5.6, Customer-caused or third party-caused outages or disruptions (except to the extent that such outages or disruptions are caused by those duly authorised third parties sub-contracted by the Supplier to perform the Services), or outages or disruptions attributable in whole or in part to force majeure events within the meaning of clause 17.

5.14 For avoidance of doubt, 'availability' is defined as the ability of the services and systems providing the Software to respond to a legitimately formatted request at the hosting facility's Internet endpoint. Local issues affecting access to the Software from within the Customer network or general issues affecting Internet traffic and which are outside of the control of the Supplier do not constitute unavailability of the Software.

6. CUSTOMER'S USE OF SERVICES AND OBLIGATIONS

6.1 The Customer shall:

(a) provide the Supplier with all necessary co-operation in relation to this Agreement, and with all necessary access to such information as may be required by the Supplier in order to render the Services, including but not limited to Customer Data, security access information and software interfaces to the Customer's other business applications;

(b) provide such personnel assistance, including the Customer Account Team and other Customer personnel, as may be reasonably requested by the Supplier from time to time.

(c) comply with all applicable laws and regulations with respect to its activities under this Agreement;

(d) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services;

(e) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time;

(f) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet;

(g) use reasonable endeavours to prevent any unauthorised access to, or use of, the Software and notify the Supplier promptly of any such unauthorised access or use;

(h) provide front-line support to Named Users who are not the designated CSRs. However, the Customer's designated CSRs may contact Supplier technical support in order to report problems from Named Users that the Customer's designated CSRs cannot resolve themselves after they have performed a reasonable level of diagnosis;

(i) carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any timetable or delivery schedule set out in this Agreement as reasonably necessary; and

(j) provide references to prospective customers at the Supplier's reasonable request, including phone calls and site visits.

6.2 In relation to Named Users, the Customer shall ensure that:

(a) the maximum number of users that it authorises to access and use the Software does not exceed the number of Named User licences specified in the Service Order Form, and that any Named User

licence is used only by the relevant individual Named User unless that licence has been reassigned in its entirety to another individual Named User (in which event the previous Named User shall no longer have any right to access or use the Software);

(b) each Named User keeps the log-in details of their account confidential and regularly changes any passwords; and

(c) each Named User complies with all applicable laws and regulations and the terms of this Agreement as appropriate.

6.3 The Customer shall not:

(a) knowingly store, distribute or transmit any Virus, or any material through the Hosting Services that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; depicts sexually explicit images; promotes unlawful violence; is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or in a manner that is otherwise illegal or causes damage or injury to any person or property; and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

(b) attempt to copy, duplicate, modify, create derivative works from or distribute all or any portion of the Software except to the extent expressly set out in this Agreement or as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties; or

(c) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties; or

(d) access all or any part of the Software or Hosting Services in order to build a product or service which competes with the Software and/or the Services; or

(e) use the Software or Hosting Services to provide services to third parties except with the prior written agreement of the Supplier; or

(f) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Named Users, or

(g) subject to clause 20.3, transfer, temporarily or permanently, any of its rights under this Agreement, or

(h) attempt to obtain, or assist third parties in obtaining, access to the Software, other than as provided under this clause 6.3; or

(i) allow the maximum number of users that it authorises to access and use the Software to exceed the number of Named User licences specified in the Service Order Form, nor allow any Named User licence to be used by more than one individual Named User unless that licence it has been reassigned in its entirety to another individual Named User (in which event the previous Named User shall no longer have any right to access or use the Software).

6.4 The rights provided under this clause 6 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

7. IMPLEMENTATION AND ACCEPTANCE

7.1 The Supplier shall:

(a) use reasonable endeavours to perform the Implementation Services as specified in the Service Order Form and/or in the Special Conditions;

(b) provide training in accordance with the Service Order Form.

7.2 The Customer shall appoint the Customer's Project Manager, who shall have the authority to contractually bind the Customer on all matters relating to this Agreement. The Customer shall use reasonable endeavours to ensure continuity of the Customer's Project Manager;

7.3 The Supplier and the Customer shall co-operate in implementing the Services in accordance with the implementation provisions in the Service Order Form and/or the Special Conditions.

7.4 Within five days of the Supplier's delivery to the Customer of the Implementation Services, the Customer shall review the Configuration to confirm that it functions in material conformance with the applicable portion of the Service Order Form and/or the Special Conditions. If the Configuration fails in any material respect to conform with such provisions, the Customer shall give the Supplier a detailed description of any such non-conformance ("**Error**"), in writing, within the five-day review period.

7.5 With respect to any Errors, the Supplier shall use reasonable endeavours to correct any such Error within a reasonable time and, on completion, submit the corrected Configuration to the Customer. The provisions of this clause 7.5 shall then apply again, up to three additional times. If the Supplier is unable to correct such Error after three attempts, either party may terminate this Agreement without further liability to the other party.

7.6 On accepting the Configuration, the Customer shall sign the Supplier's acceptance certificate. In any case, if the Customer does not provide any written comments in the five-day period specified in clause 7.5 above, or if the Configuration is found to conform with the applicable portion of the Service Order Form and/or the Special Conditions, the Configuration shall be deemed accepted. For the avoidance of doubt, any use of the Software by the Customer in a live environment, after it has been rolled out to the Customer's employees for operational purposes, will be treated as acceptance by the Customer and any failure to sign the Supplier's acceptance certificate shall not relieve the Customer of its obligations to make payment of the Fees. Any further Implementation services provided by the Supplier after acceptance or deemed acceptance shall not alter that status of that acceptance.

8. CHANGES TO SERVICES

8.1 The Customer acknowledges that the Supplier may amend develop and update the Software in its discretion from time to time without notice to or requiring any consent from the Customer, provided that the amended developed or updated Software shall continue to comply with the undertaking in clause 5.2.

9. CUSTOMER DATA AND DATA PROTECTION

9.1 The Customer shall own all rights, title and interest in and to all of the Customer Data.

9.2 Both parties shall comply with all applicable requirements of the Data Protection Legislation and shall process personal data only in accordance with the terms of the Data Compliance Schedule. The Data Compliance Schedule is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

9.3 The Customer shall be entitled to unlimited data storage relating to its use of the Product subject to a "reasonable use" policy.

10. CHARGES AND PAYMENT

10.1 The Customer shall pay the Implementation Services Fees and the annual Software Licence Fees set out in the Service Order Form for the implementation, use, maintenance and support of the Software.

10.2 The Customer shall reimburse the Supplier for all actual, reasonable travel expenses including, but not limited to, airfare, hotel and meals incurred by the Supplier in performance of the Services.

10.3 All amounts and fees stated or referred to in this Agreement are exclusive of VAT, which shall be added to the Supplier's invoice(s) at the appropriate rate.

10.4 The Supplier shall invoice the Customer upon the date of this Agreement and then in advance of each anniversary of the Contract Start Date such that the Supplier can expect to receive payment before the anniversary of the Contract Start Date. Unless otherwise specified in a Service Order Form, the Supplier shall be entitled, with effect from each anniversary of the Contract Start Date, to increase the Fees by the greater of 5% or the same percentage as the cumulative average increase in the United Kingdom Retail Price Index (RPI) calculated from the date of the last increase in the Fees (or Contract Start Date for the first such increase). For the avoidance of doubt the Supplier is entitled to increase Fees based on cumulative RPI increases during the Initial Term and any subsequent Year even if, for any reason, the Supplier does not implement an increase at the end of the Initial Term or any subsequent Year.

10.5 The Customer shall provide the Supplier with such paperwork as is necessary to enable the Supplier to invoice the Customer as specified in clause 10.4.

10.6 Each invoice is due and payable 30 days after the invoice date. If the Supplier has not received payment before the anniversary of the Contract Start Date, and without prejudice to any other rights and remedies of the Supplier:

(a) the Supplier may, without liability to the Customer, disable the Customer's account and the passwords and access of the Customer and its Named Users to all or any part of the Software, and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

(b) interest shall accrue on such due amounts at an annual rate equal to 4% over the then current base lending rate of Lloyds Bank PLC at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment.

11. PROPRIETARY RIGHTS

11.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Software and the Services. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Software, Services or any related documentation.

11.2 The Supplier confirms that it has all the rights in relation to the Software that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

12. CONFIDENTIALITY

12.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not include information that:

(a) is or becomes publicly known other than through any act or omission of the receiving party; or

(b) was in the other party's lawful possession before the disclosure; or

(c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or

(d) is independently developed by the receiving party, which independent development can be shown by written evidence; or

(e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

12.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than

the implementation of this Agreement or as expressly permitted by this Agreement.

12.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

12.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

12.5 The Customer acknowledges that the Software, the results of any performance tests of the Software and the Services constitute the Supplier's Confidential Information.

12.6 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.

12.7 Notwithstanding any other clause, term or provision of this Agreement, the Customer agrees that the Supplier shall be authorised to process Customer Data, anonymised and aggregated with the personal data of other customers, for the purpose of creating and, at its discretion, publishing benchmarking information.

12.8 This clause 12 shall survive termination of this Agreement, however arising.

13. **PUBLICITY**

13.1 The parties consent to the publication of a press release or other public announcement by either party regarding the entry into of this Agreement (with written approval from the Customer).

13.2 The Customer consents to the use by the Supplier of the Customer corporate logo on the supplier website and/or in other Supplier promotional materials (with written approval from the Customer).

13.3 The Customer agrees to the development of case studies and other promotional material illustrating practical use of the solution (with written approval from the Customer).

14. **INDEMNITY**

14.1 The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Software infringes any United Kingdom patent effective as of the Contract Start Date, copyright, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded

against the Customer in judgment or settlement of such claims, provided that:

(a) the Supplier is given prompt notice of any such claim;

(b) the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and

(c) the Supplier is given sole authority to defend or settle the claim.

14.2 In the defence or settlement of the claim, the Supplier may obtain for the Customer the right to continue using the Software, replace or modify the Software so that it becomes non-infringing or, if such remedies are not reasonably available, terminate this Agreement without liability to the Customer. The Supplier shall have no liability if the alleged infringement is based on:

(a) a modification of the Software by anyone other than the Supplier; or

(b) the Customer's use of the Software in a manner contrary to the instructions given to the Customer by the Supplier; or

(c) the Customer's use of the Software after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

14.3 This clause 14 and clause 15.5(b) state the Customer's sole and exclusive rights and remedies, and the Supplier's entire obligations and liability, for patent, copyright, database or right of confidentiality infringement.

15. **LIMITATION OF LIABILITY**

15.1 This clause 15 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:

(a) arising under or in connection with this Agreement;

(b) in respect of any use made by the Customer of the Services, the Software, the Configuration or any part of them; and

(c) in respect of any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

15.2 Except as expressly and specifically provided in this Agreement:

(a) the Customer assumes sole responsibility for results obtained from the use of the Software and the Services by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction; and

(b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement.

15.3 Nothing in this Agreement excludes the liability of the Supplier:

(a) for death or personal injury caused by the Supplier's negligence; or

(b) for fraud or fraudulent misrepresentation.

15.4 The Service Level Arrangements state the Customer's full and exclusive right and remedy, and the Supplier's only obligation and liability in respect of, the performance and/or availability of the Service, or their non-performance and non-availability.

15.5 Subject to clause 15.3 and clause 15.4:

(a) the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation (whether innocent or negligent), restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss costs, damages, charges or expenses however arising under this Agreement; and

(b) the Supplier's total aggregate liability in contract (including in respect of the indemnity in clause 14.1), tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the price paid for the Services during the 12 months preceding the date on which the claim arose.

16. **TERM AND TERMINATION**

16.1 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this Agreement without liability to the other if:

(a) the other party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or

(b) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to such other party; or

(c) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of such other party, or notice of intention to appoint an administrator is given by such other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or

(d) a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of such other party, or if any other person takes possession of or sells such other party's assets; or

(e) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or

(f) the other party ceases, or threatens to cease, to trade; or

(g) the other party takes or suffers any similar or analogous action to any of the foregoing in any jurisdiction in consequence of debt.

16.2 Without prejudice to any other rights or remedies to which the parties may be entitled, the Supplier may terminate this Agreement without liability to the Customer if there is a change of control of the Customer within the meaning of section 1124 of the Corporation Tax Act 2010 such that the Customer is controlled by a company that is a competitor to the Supplier.

16.3 On termination of this Agreement for any reason:

(a) all existing Service Order Forms shall automatically terminate;

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

(c) the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than ten days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and

(d) the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

17. FORCE MAJEURE

17.1 Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for six months, the party not affected may terminate this Agreement by giving 30 days' written notice to the other party.

18. NOTICES

18.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement, or such other address as may have been notified by that party for such purposes.

18.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

18.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. A notice given under this Agreement is not valid if sent by e-mail and, for the avoidance of doubt, "writing" shall not include e-mail for the purposes of this clause.

19. NON POACHING OF STAFF

19.1 The Customer agrees that during the term of this Agreement and for a period of 12 months after its termination, it shall not without the prior written consent of the Supplier, solicit, or permit any subsidiary or associate (as those terms are defined in sections 1159 and 345 of the Companies Act 2006) to solicit, the employment or engagement of any employee or contractor of the Supplier who has been engaged in the performance of this Agreement or any Service Order Form, whether or not the acceptance of such offer would cause the employee or contractor to be in breach of his contract with the Supplier.

20. MISCELLANEOUS AND GENERAL

20.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

20.2 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

20.3 This Agreement does not confer any rights on any person or party (other than the parties to this

Agreement and (where applicable) their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

20.4 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

20.5 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

20.6 If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

20.7 A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.

20.8 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

20.9 This Agreement and any documents referred to in it constitute the whole agreement between the parties

and supersede any previous arrangement, understanding or agreement between them relating to the subject matter of this Agreement.

20.10 Each party acknowledges that, in entering into this Agreement and the documents referred to in it, it has not relied and does not rely on any statement, representation (whether innocent or negligent), assurance or warranty (**Representation**) of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement or those documents.

20.11 Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract as expressly provided in this Agreement.

20.12 Nothing in clauses 20.8, 20.9 or 20.11 shall limit or exclude any liability for fraud.

20.13 This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England.

20.14 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

<div align="center">**Special Conditions**</div>

SECTION 1: SPECIFICATION AND CONFIGURATION

The specification consists of the following modules;

- Incident
- Risk
- Audit
- Environment
- Portal

The solution is pre-configured with a set of forms and checklists in accordance with Make UK's interpretation of requirements for smaller businesses in the UK.

SECTION 2: TECHNICAL SUPPORT

Remote, telephone- and email-based support will be provided by the supplier around:

- onboarding and set-up in the system

- system training (including self-serve training resources such as fact sheets and tutorial videos

- ad-hoc technical support enquiries

SECTION 3: SERVICE SUPPORT SERVICE LEVEL AGREEMENT (MAKE UK HSS SUBSCRIBERS ONLY)

Make UK undertake to monitor your company's EHS indicators available through Assure & provide proactive support without you having to ask for it.

Triggers for Make UK interventions will be as follows:

1. A RIDDOR Report is raised
2. A risk assessment is created & approved with a red risk (score 15 to 25)
3. A consistent upward trend in accident reports over a two month period
4. A consistent downwards trend in Near Miss or hazard reports over a two month period

Make UK commit to taking the following interventions based on these triggers:

1. Your HSS consultant will contact you by phone **same day** & support as required
2. Your HSS consultant will contact by email with guidance relevant to that hazard within **5 working days**
3. You will receive an email from Make UK providing guidance & support on the specific accident type when a trend is identified.

4. Make UK will contact you by phone to discuss the issue when a trend is identified.

Caveats

We do not commit to take action on any other indicators.

Our monitoring & intervention is meant to supplement your own EHS management system, not replace it.

Organisations are still legally required to monitor their own performance & take their own actions. Make UK's interventions do not replace this.

Make UK take no legal responsibility for managing your EHS management system.

If the support required on a single issue is greater than 2 hours, Make UK reserve the right to charge for this work. This is will be detailed in a proposal & agreed with you before any action is undertaken.

SECTION 4: IMPLEMENTATION SERVICES

The Implementation Services will be as follows:

- Implementation of the Software to meet the specification in section 1 of the Special Conditions, including
    - Organisation structure
    - Users
    - Permissions
    - Notifications and alerts
    - Approval workflows
    - Default Record review settings
    - Fixed Question set templates
    - Fixed Portal forms
    - Fixed Dashboards
    - Fixed Data views
- Delivery of system training (remote support, video tutorials and fact sheets)

Data Compliance Schedule

SECTION 1: AGREED TERMS

1. DEFINITIONS

1.1 In this Data Compliance Schedule, the following additional definitions shall apply:

Controller: shall have the same meaning as in the applicable Data Protection Legislation;

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party;

Data Subject: shall have the same meaning as in the applicable Data Protection Legislation;

EEA: the European Economic Area;

GDPR: EU General Data Protection Regulation (EU) 2016/679;

Hosting Partner: the tier 1 hosting partner engaged by the Supplier from time to time, such as Amazon Web Services (AWS) or equivalent**;**

Hosting Partner Audit Report: the audit report generated as a result of an audit performed by an independent third party security professional selected by the Hosting Partner to verify the adequacy of its security measures, including the security of the physical data centers from which it provides its services, such audit being (a) performed at least annually; and (b) performed according to ISO 27001 standards or such other alternative standards that are substantially equivalent to ISO 27001;

Near-Miss Incident: has the meaning given to it in section 3 of this Data Compliance Schedule;

Personal Data: means all personal data, as defined in the applicable Data Protection Legislation, processed by the Supplier on behalf of the Customer as a result of, or in connection with, the provision of Services under this Agreement;

Personal Data Breach: means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed;

Processor: shall have the same meaning as in the applicable Data Protection Legislation;

Security Measures: the security measures set out in section [4] of this Data Compliance Schedule, as the Supplier may update them from time to time to reflect changes to best practice; and

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the GDPR; the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

2. BACKGROUND TO PROCESSING

2.1 The parties acknowledge that the Supplier may process Personal Data on behalf of the Customer when processing Customer Data in carrying out the Services and/or its obligations under this Agreement.

2.2   In respect of the provision of the Services, the parties agree and acknowledge for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is a Processor.

2.3   The subject-matter and duration of processing, the nature and purpose of the processing and the type of Personal Data and categories of Data Subject are set out in section [2] of this Data Compliance Schedule.

3.   SUPPLIER OBLIGATIONS

Customer instructions

3.1   The Supplier shall process the Personal Data only in accordance with the terms of this Agreement and such other documented instructions received from the Customer from time to time and shall not process the Personal Data for any other purpose, unless required by Applicable Law to otherwise process the Personal Data.

3.2   Where the Supplier is relying on Applicable Law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required, unless prohibited from so notifying the Customer under Applicable Law.

Confidentiality obligations

3.3   The Supplier shall ensure that all personnel who have access to and/or process Personal Data are:

(a)   obliged to keep the Personal Data confidential; and

(b)   are aware of the Supplier's duties and their personal duties and obligations under the Data Protection Legislation and this Agreement, including this Data Compliance Schedule.

3.4   The Supplier shall take reasonable steps, including the provision of appropriate training, to ensure the reliability, competence and integrity of all personnel who have access to and/or process Personal Data.

Security of processing

3.5   The Supplier shall ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected.

3.6   Without prejudice to clause 3.4, the Supplier shall comply with the Security Measures.

Breach reporting

3.7   The Supplier shall notify the Customer without undue delay (and in any event within 48 hours) upon becoming aware of a Personal Data Breach and shall take reasonable steps to mitigate the effects and to minimise any damage resulting from the Personal Data Breach.

3.8   The Supplier shall notify the Customer promptly of any Near-Miss Incident, together with the details of any remedial measures taken or intended to be taken (if any) to guard against similar incidents and/or any Personal Data Breach.

Data transfers

3.9   The Supplier shall not transfer any Personal Data outside of the EEA (and, should the UK cease at any time to be within the EEA, it shall for the purposes of this clause 3.9 be treated as if it

were nevertheless part of the EEA), unless the Customer's prior written consent has been obtained and the following conditions fulfilled:

    (a)   the Customer or the Supplier has provided appropriate safeguards in relation to the transfer; and

    (b)   the Supplier complies with the instructions notified to it in advance by the Customer with respect to the processing of the Personal Data.

Sub-processing

3.10   The Supplier shall not sub-contract the processing of Personal Data to any third party without the prior written consent of the Customer.

3.11   The Customer consents to the Supplier appointing a Hosting Partner as a third-party processor of Personal Data under this Agreement and SHE Software Ltd as the platform provider and sub-processor.

Assistance

3.12   The Supplier shall, taking account of the nature of the Services:

    (a)   provide the Customer promptly with all reasonable co-operation and assistance required by the Customer in relation to any request by a Data Subject to exercise his/her rights under the Data Protection Legislation; and

    (b)   provide all reasonable assistance in ensuring the Customer's compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators within such reasonable timescales as the Customer may specify.

Expiry or termination of processing

3.13   At the direction of the Customer, the Supplier shall delete or return Personal Data and copies thereof to the Customer on termination of this Agreement, unless required by Applicable Law to store the Personal Data.

Audits and accountability

3.14   The Supplier shall:

    (a)   maintain complete and accurate records and information to demonstrate its compliance with this Agreement and Data Compliance Schedule;

    (b)   allow for and contribute to audits, including inspections, by the Customer or the Customer's designated auditor, for the purpose of performing audits designed to confirm compliance with the terms of this Data Compliance Schedule;

    (c)   inform the Customer if the Supplier considers, in its opinion (acting reasonably), that an instruction given to it by the Customer infringes any provision of the Data Protection Legislation.

3.15   The Customer agrees to exercise any right it may have to conduct an audit or inspection in relation to the sub-processing carried out by the Hosting Partner on behalf of the Supplier under this Agreement by requesting the Supplier to instruct the Hosting Partner to provide the Supplier with a copy of the Hosting Partner Audit Report.

4.   CUSTOMER RESPONSIBLITIES

4.1   The Customer shall ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier and/or lawful collection of the

Personal Data by the Supplier on behalf of the Customer for the duration and purposes of this Agreement.

4.2   The Customer shall notify the Supplier promptly in writing of any request for it to take any action to assist the Customer with ensuring compliance with its obligations under the Data Protection Legislation, including with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators.

4.3   The Customer warrants that it has a lawful basis under the Data Protection Legislation to transfer the Personal Data to the Supplier for processing and/or enable lawful collection by the Supplier of the Personal Data.

4.4   The Customer warrants that it is not aware of any circumstances likely to give rise to a breach of the Data Protection Legislation (including any Personal Data Breach).

SECTION 2: DESCRIPTION OF PROCESSING

Description	Detail
Subject matter of the processing	Details of an accident, incident or near miss including details of first aider's witnesses and the injured person. Records of training completed
Duration of the processing	The Supplier provides a solution that securely stores the Customer Data as and when and for as long as the Customer chooses. The duration of the processing is therefore determined by the Customer's own retention policy. On termination of this Agreement, the Supplier shall retain Customer Data for a period of 30 days (or such other period as may be agreed between the parties from time to time) to allow the Customer a reasonable opportunity to download or export the information it needs.
Nature and purposes of the processing	The Supplier's solution provides a means for the Customer to investigate, monitor and analyse accidents or potential accidents, as an aid to accident prevention. The Supplier provides a solution that securely stores the Customer Data. The Supplier will not process or otherwise manipulate the Customer Data other than in accordance with this Agreement, which includes the following: (a) to provide a solution that stores the Customer Data; (b) to provide the Customer with access to that Customer Data; and (c) under the Customer's written instructions, to perform data manipulation to bulk upload Customer Data.
Type of Personal Data	Includes name, address, age, telephone number of injured person and/or witnesses, possible personal medical information of injured person.
Categories of Data Subject	Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, students / pupils, members of the public

SECTION 3: NEAR MISS REPORTING

The Supplier shall allocate a severity level to all threatened or unsuccessful incidents of accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed by the Supplier on behalf of the Customer ("**Unsuccessful Incident**") based on its reasonable assessment of the severity level of the relevant Unsuccessful Incident in accordance with the table set out below:

Risk Heat Map	Impact	Likelihood			
		0 - <20%	20 - <50%	50 - <80%	80 - <100%
	Severe	🟧	🟥	🟥	🟥
	Significant	🟨	🟧	🟥	🟥
	Moderate	🟩	🟨	🟧	🟧
	Low	🟩	🟩	🟨	🟨

Impact level of the risk:
1: Low - Insignificant changes
2: Moderate - delay, increased cost in excess of tolerance
3: Major - Substantial delay, key deliverables not met, incur cost
4: Severe - Inability to deliver, business objectives not viable

If an Unsuccessful Incident is allocated as red by the Supplier it shall be categorised as a "**Near-Miss Incident**" and shall be notified to the Customer in accordance with this Data Compliance Schedule.

SECTION 4: SECURITY MEASURES

SHE Software operates within the ISO27001\2 framework. Within the Security framework all policies and standards are reviewed annually at a minimum and are externally audited by our security partners.

Penetration tests are conducted at least annually across all environments of the SHE Software SaaS provision, with ad hoc testing of code and process to ensure ongoing standards are maintained and adhered to.

The ISMS covers all areas within SHE Software with overall accountability being held by the Chief Technology Officer, supported by the Executive Team. Local Security responsibilities are assigned at both a company and departmental level.

Who	Involvement
Chief Executive	• Overall Sponsorship for the ISMS.
Executive Management Group	• Approval to operate the ISMS. • Approves changes to the ISMS. • Commits resource. • Signs off Risk Assessments and high level treatment plans.
Chief Technology Officer	• Ensures the ongoing operation of the ISMS. • Proposes changes to the ISMS. • Acts as Group Risk Manager with support from Local Risk Champions. • Escalates risks and issues to the Information Risk Management Committee.
Executive Team	• Provide sponsorship and support for ISMS within the company.
Local Risk - Teams	• Responsible for delegated risk management activities.
All Employees	• Responsible for the effective operation of assigned elements of the ISMS. • Identify and propose improvements.

The purpose of the ISMS is to protect information assets from threats, whether internal or external, deliberate and accidental.

The ISMS ensures that:

- Clear risk based decisions are taken
- Information is protected against unauthorised access
- Confidentiality of information is assured
- Integrity of the information is maintained
- Regulatory and legislative requirements are met
- Business Continuity Management is effectively delivered, maintained and tested
- Information Security training is available to all staff
- All breaches of information security, actual or suspected will be managed effectively

Classification and Handling

An information classification system is used to categorise information based on an assessment of the impact if that information were to be disclosed to an unauthorised person, lost or destroyed. This ensures that the assets receive the appropriate level of protection.

Scope

The policy applies to all SHE Software personnel irrespective of status, including temporary staff, contractors, consultants, and third parties who have access to SHE Software data and systems. There may be circumstances where it is not possible to fully apply the policy in which case a risk assessment should be conducted in accordance with the Risk Control process.

It covers all aspects of data handling including, but not limited to:

- Collection;
- Processing;
- Data Storage, Transit & Access;
- Retention;
- Disposal.

Data Disposal

Where necessary, electronic data will be disposed of securely and in accordance with the classification level of the data.

SHE Software ensures that all suppliers provide adequate evidence of destruction following the destruction of any media.

Technical Measures

SHE operates within a "best practice" security framework and topology with regards its foot print and application of security systems. These technical measures include use of web based security applications as well as a comprehensive monitoring of all environments – Live, Development and Test.

Technologies used;
Web Application Firewalls (WaF)
GuardDuty – DDOS, Threat Detection, API Monitoring, Log analysis, VPC analysis
AntiVirus – TrendMicro: Device Behaviour Monitoring, Device Threat Detection, Data Loss Protection (DLP), Predictive Machine Learning (PDM)
Encryption – AES256, HTTPS \ TLS1.2, MS TDE (At rest and in transit)