

1. DEFINITIONS & INTERPRETATION

1.1 Definitions: The definitions and rules of interpretation in this clause apply in this Agreement.

“Applicable Data Protection Laws”: means:

- a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom (as applicable in England) which relates to the protection of personal data; and
- b) To the extent the EU GDPR applies in England, the law of the European Union or any member state of the European Union to which HBXL is subject, which relates to the protection of personal data.

“Authorised Users”: those named employees, agents and independent contractors of the Customer who are authorised by the Customer to use the BuildProjex Services, as further described in clause 3.

“Authorised Visitors”: those clients and subcontractors of a Customer given limited access by the Customer as ‘guests’ to view information specified for their access by the Customer and respond to requests and upload information to the BuildProjex Web Application, who are not Authorised Users.

“BuildProjex Web Application”: means the cloud software application (or any part of it) providing the Customer with access to the Subscribed Software via the BuildProjex Services.

“BuildProjex Services”: means the subscription services provided by HBXL to the Customer under this Agreement which enables the Authorised Users to access the Subscribed Software, Documentation and Support Services (or any part of them).

“Business Day”: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

“Customer”: the person identified in the Order Form.

“Customer Data”: any and all data (including personal data, as defined in clause 7.1) inputted into the BuildProjex Web Application by the Customer and/or Authorised Users and/or Authorised Visitors and/or HBXL on the Customer’s behalf (including but not limited to plans, drawings, specifications, videos or photos).

“Documentation”: the documentation made available to the Customer by HBXL online and/or within the BuildProjex Web Application which sets out user instructions for the Subscribed Software.

“Effective Date”: the date of this Agreement as noted on the software order form.

“EU GDPR”: Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

“EULA”: the end user licence agreement which applies in respect of the Customer’s, Authorised Users’ and Authorised Visitors’ use of the Subscribed Software.

“HBXL”: House Builder XL Ltd, a private company incorporated and registered in England and Wales under company number 03959121 having its registered office at Future Space, North Gate (UWE), Filton Road, Stoke Gifford, Bristol, BS34 8RB.

“Initial Subscription Fee”: the initial monthly or annual fee payable by the Customer for the BuildProjex Services as set out on the Order Form.

“Initial Subscription Period”: the initial period of the Customer’s subscription to the BuildProjex Services as set out on the Order Form.

“Normal Business Hours”: 9am to 5pm local UK time, each Business Day.

“Order Form”: means the software order form attached to this Agreement or made available or provided by HBXL to the Customer.

“Renewal Period(s)”: the period(s) described in clause 14.2.

“Subscription Commencement Date”: the date on which the Subscribed Software are activated or the date on which the Premium Trial (as defined in clause 5.1) expires (as applicable), whichever is earlier.

“Subscription Fees”: the fees payable by the Customer in respect of the BuildProjex Services as set out on the Order Form or from time to time payable by the Customer in the event that additional Authorised Users or Subscribed Software are requested by the Customer.

“Subscribed Software”: the software known as BuildProjex, which is provided by HBXL and which is available via the BuildProjex Web Application accessible via www.buildprojex.co.uk or any other website notified to the Customer by HBXL from time to time, limited to the version(s) of which the Customer opts to include within the scope of its User Subscription.

“Subscription Period”: has the meaning given in clause 14.2 (being the Initial Subscription Period together with any subsequent Renewal Periods).

“**Support Services**”: means the standard email, telephone and remote access support and updates provided by HBXL to the Customer as part of the BuildProjex Services.

“**Support Services Policy**”: HBXL’s policy for providing the Support Services as made available at help.hbxl.co.uk or such other website address as may be notified to the Customer from time to time.

“**Terms**”: means these terms and conditions, as may be amended from time to time pursuant to clause 16.2.

“**Trial Software**”: the software which the Customer selects to trial from time to time in accordance with clause 5 (whether as a Standard Trial (as defined in clause 5.1) or as a Premium Trial (as defined in clause 5.1)).

“**UK GDPR**”: has the meaning given to it in the Data Protection Act 2018.

“**User Subscription**”: the user subscription purchased by the Customer which enables one or more Authorised Users to access and use the BuildProjex Services on and subject to these Terms, as set out in the Order Form.

“**Virus**”: any thing or device 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; or access to or the operation of any programme or data, including the reliability of any programme or data; or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

1.2 Interpretation: In this Agreement the following rules of interpretation apply:

1.2.1 A reference to **this Agreement** is a reference to these Terms as varied or novated (in each case, other than in breach of these Terms) from time to time.

1.2.2 Clause headings shall not affect the interpretation of this Agreement.

1.2.3 A **person** includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person’s legal and personal representatives, successors or permitted assigns.

1.2.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

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

1.2.6 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement and shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.

1.2.7 Any obligation on the Customer not to do something includes an obligation not to allow that thing to be done.

1.2.8 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.

1.2.9 A reference to **writing** or **written** includes e-mail but not fax.

2. ACCEPTANCE OF THESE TERMS

Acceptance of these Terms will be deemed to be given on the first to occur of the Customer:

- (a) returning a signed copy of the Order Form;
- (b) submitting the online Order Form;
- (c) completing HBXL’s direct debit mandate in respect of the BuildProjex Services;
- (d) paying the Initial Subscription Fee by credit or debit card; and
- (e) using the Subscribed Software (including during any Standard Trial or Premium Trial, as defined in clause 5.1).

3. USER SUBSCRIPTIONS AND AUTHORISED VISITORS

3.1 Subject to:

3.1.1 the Customer purchasing the relevant number of User Subscriptions; and

3.1.2 the restrictions set out in this clause 3 and the other terms and conditions of this Agreement (as accepted by the Customer in accordance with clause 2),

HBXL hereby grants to the Customer a non-exclusive, non-transferable right to access and use, and to permit Authorised Users to access and use, the BuildProjex Services during the Subscription Period solely for the Customer’s internal business operations.

3.2 A User Subscription shall entitle named Authorised Users nominated by the Customer at any time to access and use the BuildProjex Services, up to the number of Authorised Users paid for by the Customer and authorised by HBXL (as set out in the application Order Form or as agreed by HBXL from time to time). The Customer can reallocate

their named Authorised Users at any time during their subscription. If the Customer requires more than the permitted number of Authorised Users to access and use the BuildProjex Services at the same time, then it must purchase additional User Subscriptions. Each User Subscription must be authenticated online via the BuildProjex Web Application.

3.3 In relation to the Authorised Users, the Customer undertakes that:

3.3.1 it will not allow or suffer any User Subscription to be used by anyone other than the Authorised Users;

3.3.2 each Authorised User shall keep his password for use of the BuildProjex Services confidential; and

3.3.3 it shall use all reasonable endeavours to ensure that each Authorised User shall agree to, and comply with, the EULA.

3.4 The Customer may reduce the number of Authorised Users by giving notice to HBXL at the end of the current Subscription Period in writing.

3.5 The Customer shall be entitled to grant access to the Subscribed Software to any bona fide Authorised Visitors, up to the number of Authorised Visitors permitted by HBXL, for specific build projects they are involved in and on the basis they can only access specific information marked for their attention. All Authorised Visitors will need to complete a registration process with BuildProjex and opt in to accepting the applicable EULA.

3.6 The Customer shall not (and shall procure that their Authorised Users and Authorised Visitors shall not) access, store, distribute or transmit any Viruses, or any material during the course of its use of the BuildProjex Services:

3.6.1 which is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

3.6.2 which facilitates illegal activity;

3.6.3 which depicts sexually explicit images;

3.6.4 which promotes unlawful violence;

3.6.5 which is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

3.6.6 in such a manner that is otherwise illegal or causes damage or injury to any person or property,

and HBXL reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's (and/or any Authorised User's and/or any Authorised Visitor's) access to the BuildProjex Services

(whether in whole or in part) if the Customer and/or any Authorised User and/or any Authorised Visitor breaches the provisions of this clause 3.6.

3.7 The Customer shall not and shall procure that their Authorised Users and Authorised Visitors shall not:

3.7.1 (except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement) attempt to:

(a) copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute the Subscribed Software and/or Documentation in any form or media, whether in whole or in part; or

(b) de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form the Subscribed Software;

3.7.2 access the Subscribed Software in order to build a product or service which competes with the BuildProjex Services;

3.7.3 (subject to clause 3.2) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Subscribed Software and/or BuildProjex Services available to any third party except the Authorised Users or any bona fide Authorised Visitors; or

3.7.4 attempt to obtain, or assist third parties in obtaining, access to the Subscribed Software and/or BuildProjex Services, other than as provided under this clause 3.

3.8 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Subscribed Software and/or the BuildProjex Services (including, but not limited to, keeping all passwords secure and not sharing user login details) and, in the event of any such unauthorised access or use, promptly notify HBXL.

3.9 The rights provided under this clause 3 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer unless HBXL gives its prior written authorization (email acceptable).

3.10 The Customer may upload and store Customer Data onto the Subscribed Software and/or the BuildProjex Services, provided that the Customer complies with the terms of this Agreement and with any other requirements of HBXL. Any uploaded Customer Data will be subject to file size upload limits imposed by HBXL in its discretion.

4. ADDITIONAL USER SUBSCRIPTIONS & SUBSCRIBED SOFTWARE

- 4.1 The Customer may, from time to time during the Subscription Period, purchase additional User Subscriptions at the then current rates charged by HBXL. If the Customer wishes to purchase additional User Subscriptions, the Customer shall contact HBXL by phone.
- 4.2 If additional User Subscriptions are purchased by the Customer part way during any month of the Subscription Period, the Subscription Fees shall be pro-rated for that month.

5. TRIAL SOFTWARE

- 5.1. The Customer may, either before purchasing any User Subscriptions or from time to time during the Subscription Period (as appropriate), be permitted to activate Trial Software within the Subscribed Software which will enable the Customer and/or Authorised Users and/or Authorised Visitors (as appropriate) to trial the functionality of the Trial Software (which may be limited) for a period of either 14 days ("**Standard Trial**") or 30 days ("**Premium Trial**"), subject to these Terms.
- 5.2. In the case of a Standard Trial, no billing details will be required and the Customer's (and any Authorised Users' and/or Authorised Visitors') access to the Trial Software will cease automatically upon expiry of the Standard Trial.
- 5.3. In the case of a Premium Trial, the Customer will be required to provide billing details to HBXL and upon expiry of the Premium Trial (i) the Trial Software shall automatically become Subscribed Software and (ii) the Customer shall be obliged to pay the applicable Subscription Fees for the BuildProjex Services at the rates applicable on the date when the Premium Trial commenced, unless the Customer confirms cancellation by phone at any time during the Premium Trial (up until 5pm on the last Business Day of the Premium Trial). HBXL will use reasonable endeavours to ensure that at least one email reminder will be sent to the Customer before expiry of the Premium Trial (receipt of which will be deemed to have occurred within one hour of being sent, even if the Customer claims not to have received it for any reason). Unless otherwise agreed, the Initial Subscription Period in respect of any Trial Software which become Subscribed Software shall be a minimum of 12 months (or such longer period as the Customer may request) or, if purchased during the Subscription Period, pro-rated for the remainder of the Subscription Period.
- 5.4. On expiry of any Standard Trial or Premium Trial, HBXL shall not be obliged to provide the Customer with copies of any Customer Data and/or other files or documents uploaded to, or produced using, any Trial Software.
- 5.5. Access to any Trial Software shall be at HBXL's sole discretion, in particular, where the Customer has registered for a Standard Trial and/or Premium Trial in respect of the same Trial Software on more than one occasion (whether or not using the same email address).

6. BUILDPROJEX SERVICES

- 6.1 HBXL shall, during the Subscription Period, provide the BuildProjex Services to the Customer on and subject to the terms of this Agreement.
- 6.2 HBXL shall use commercially reasonable endeavours to make the BuildProjex Services available 24 hours a day, seven days a week, except for any emergency maintenance which cannot be avoided or maintenance performed outside Normal Business Hours, provided that HBXL has used reasonable endeavours to give the Customer at least three Normal Business Hours' notice in advance of any such maintenance.
- 6.3 HBXL will, as part of the BuildProjex Services and at no additional cost to the Customer, use its reasonable endeavours to provide the Customer with the Support Services during Normal Business Hours in accordance with HBXL's Support Services Policy in effect at the time that the Support Services are provided. HBXL may amend the Support Services Policy in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at HBXL's then current rates.
- 6.4 The Subscribed Software is a software product in a range of software products available from HBXL and whilst HBXL may (whether now or in the future, in our discretion) make every reasonable effort to ensure that HBXL's software products are compatible and will interface with each other, HBXL gives no assurance, warranty, representation or guarantee in this respect.

7. DATA PROTECTION

- 7.1 In this clause 7, the terms **controller**, **data subject**, **processor**, **personal data**, **personal data breach**, **processing** and **process** shall have the meaning given to them in the UK GDPR.
- 7.2 Both parties will comply with all applicable requirements of Applicable Data Protection Laws. This clause 7 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.
- 7.3 If and to the extent that HBXL processes any personal data on the Customer's behalf (**Personal Data**) when performing its obligations under this Agreement, the parties hereby record their intention that the Customer shall be the data controller and HBXL shall be a data processor and HBXL agrees and undertakes that it shall:
 - 7.3.1 only process Personal Data as contemplated by this Agreement and only on the Customer's written instructions (provided that if HBXL is required to process Personal Data by law it shall, where permitted, inform the Customer of such legal requirement before processing any Personal Data for such purposes, unless the Applicable Data Protection Laws prohibit HBXL from so notifying the Customer on important grounds of public interest);

- 7.3.2 ensure that each person authorised by HBXL to process Personal Data is informed of the confidential nature of the Personal Data and has committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
- 7.3.3 implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk of processing Personal Data under this Agreement and to safeguard against the unauthorised or unlawful processing of personal data and against the accidental loss or destruction of, or damage to, Personal Data;
- 7.3.4 assist the Customer insofar as this is possible (taking into account the nature of the processing and the information available to HBXL), and at the Customer's cost and written request, in responding to any request from a data subject and in ensuring the Customer's compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 7.3.5 notify the Customer without undue delay on becoming aware of a Personal Data breach involving the Personal Data;
- 7.3.6 at the written direction of the Customer, delete (to the extent reasonably commercially and technically possible) or return Customer Personal Data and copies thereof to the Customer on termination of the agreement unless HBXL is required by Applicable Data Protection Laws to continue to process that Customer Personal Data. For the purposes of this clause 7.3.6 Personal Data shall be considered deleted where it is put beyond further use by HBXL; and
- 7.3.7 maintain records to demonstrate its compliance with this clause 7 and (to the extent that HBXL is so required by Applicable Data Protection Laws) to allow for reasonable audits (at the Customer's expense) in respect of such records by the Customer or the Customer's designated auditor during normal business hours and following reasonable written notice.
- 7.4 The Customer hereby acknowledges and agrees (thereby giving its prior, general authorization to HBXL) that:
- 7.4.1 HBXL shall be generally authorised to engage third parties in connection with its processing activities under this Agreement (**sub data processor**), provided that:
- (a) HBXL shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on HBXL in this clause 7;
- (b) HBXL shall remain responsible to the Customer for the performance of its obligations under this Agreement notwithstanding the appointment of any sub data processor and shall be liable for the acts, omissions and neglects of each sub data processor;
- (c) in the event that HBXL wishes to make any changes concerning the addition or replacement of any sub data processor, it shall give the Customer written notice of the proposed change including details of the identity of such sub data processor and a description of the nature and extent of the processing to be undertaken by them and if the Customer objects to such change, it shall notify HBXL with the grounds for such objection in writing and the parties shall use their respective reasonable endeavours to address and resolve those grounds of objection failing which this Agreement may be terminated by HBXL;
- (d) if the Customer objects to any changes in accordance with clause 7.4.1(c) and cannot demonstrate, to HBXL's reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Law, the Customer shall indemnify HBXL for any losses, damages, costs (including legal fees) and expenses suffered by HBXL in accommodating the objection.
- 7.4.2 Personal Data may be transferred or stored by HBXL and its sub data processors outside the UK or the country where the Customer and the Authorised Users are located in order to provide the BuildProjex Services and perform HBXL's other obligations under this Agreement and the Customer shall ensure that it is entitled to transfer the relevant Personal Data to HBXL so that HBXL may lawfully use, process and transfer the Personal Data in accordance with this Agreement on the Customer's behalf. HBXL shall ensure that the following conditions are fulfilled where any Personal Data is transferred or stored outside of the UK:
- (a) appropriate safeguards in relation to the transfer are in place;
- (b) the data subject has enforceable rights and effective legal remedies;
- (c) HBXL shall comply with its obligations under the Applicable Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred;

- (d) HBXL shall comply with reasonable instructions notified to it in advance by the Customer or data subject with respect to the processing of the Personal Data;
- (e) HBXL shall assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) HBXL notify the Customer without undue delay on becoming aware of a personal data breach;
- (g) at the written direction of the data subject, delete or return Personal Data and copies thereof to the data subject on termination of the Subscription Period unless required by Applicable Data Protection Laws to store the Personal Data; and maintain complete and accurate records and information to demonstrate its compliance with this clause 7.

7.5 For the purposes set out in clause 7.4 above, the Customer shall promptly comply with any reasonable request of HBXL, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the UK Information Commissioner from time to time (where the UK GDPR applies to the transfer).

7.6 Either party may, at any time on not less than 30 days' notice, revise clause 7 by replacing it (in whole or part) with any applicable standard clauses approved by the EU Commission or the UK Information Commissioner's Office or forming part of an applicable certification scheme or code of conduct (**Amended Terms**). Such Amended Terms shall apply when replaced by attachment to this Agreement, but only in respect of such matters which are within the scope of the Amended Terms.

7.7 The Customer acknowledges that in using the BuildProjex Services some Personal Data of its clients and contractors on a project and other relevant third parties may be processed and hereby confirms that it will ensure appropriate consents are obtained from individuals before uploading any such Personal Data and shall indemnify and keep indemnified HBXL in respect of all and any liabilities, fines, damages, costs or other expense incurred directly or indirectly by HBXL from any failure of the Customer to adhere to all relevant laws and regulations as regards Personal Data in its use of BuildProjex.

8. HBXL'S OBLIGATIONS

8.1 HBXL undertakes that the BuildProjex Web Application will perform substantially in accordance with the Documentation and that the Support Services will be provided with reasonable skill and care.

8.2 The undertaking at clause 8.1 shall not apply to the extent of any non-conformance which is caused by use of the BuildProjex Services contrary to HBXL's instructions, or modification or alteration of the BuildProjex Web Application by any party other than HBXL or HBXL's duly authorised contractors or agents. If the BuildProjex Services do not conform to the foregoing undertaking, HBXL will, at its expense, use 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 8.1.

8.3 Notwithstanding the foregoing, HBXL:

8.3.1 does not warrant that the Customer's use of the BuildProjex Services will be uninterrupted or error-free, or that the BuildProjex Services or the information obtained by the Customer through the BuildProjex Services will meet the Customer's requirements;

8.3.2 does not warrant that any pricing information provided to the Customer is accurate or up-to-date; and

8.3.3 is not responsible for any delays, delivery failures, loss of functionality, loss of Customer Data 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 BuildProjex Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities. The Customer's attention is drawn to clause 13.4.2.

8.4 This Agreement shall not prevent HBXL from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

9. CUSTOMER'S OBLIGATIONS

9.1 The Customer shall:

9.1.1 provide HBXL with:

- (a) all necessary co-operation in relation to this Agreement; and
- (b) all necessary access to such information as may be required by HBXL,

in order for HBXL to provide the BuildProjex

Services, including but not limited to Customer Data, security access information and configuration services;

- 9.1.2 comply with all applicable laws and regulations with respect to its activities under this Agreement;
 - 9.1.3 ensure that the Authorised Users and/or Authorised Visitors use the BuildProjex Services in accordance with these Terms and shall be responsible for any Authorised User's and/or Authorised Visitor's breach of this Agreement;
 - 9.1.4 ensure that any device used by the Authorised Users and/or Authorised Visitors to access the BuildProjex Web Application and its network and systems comply with the relevant specifications provided by HBXL from time to time;
 - 9.1.5 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to HBXL'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; and
 - 9.1.6 not upload (and shall use all reasonable endeavours to ensure that all Authorised Users and Authorised Visitors shall not upload) content which is illegal, unlawful, offensive in any way and/or which has been the subject of any or actual threatened court or other legal proceedings.
- 9.2 The Customer warrants that it shall ensure that all appropriate and necessary prior consents are obtained in respect of all data or information uploaded to the BuildProjex Services which is subject to any duty of confidentiality or is in any way subject to copyright or other intellectual property rights of third parties, and the Customer shall indemnify and keep indemnified HBXL against all and any liabilities, fines, damages, costs and other expenses incurred directly or indirectly by HBXL as a consequence of any failure by the Customer to adhere to this warranty howsoever arising.
- 9.3 The Customer hereby grants to HBXL (or shall ensure that the applicable licensor grants to HBXL) a non-exclusive, perpetual, irrevocable, royalty-free, transferable licence, with the right to grant sub-licences, to store, process, make copies of and use all Customer Data documentation uploaded onto BuildProjex by the Customer or on the Customer's behalf, to the extent necessary for HBXL to provide the BuildProjex Services to the Customer, to Authorised Users and to Authorised Visitors, such licence granting HBXL the right to retain Customer Data in perpetuity for the purposes of: (i) providing the BuildProjex Services (including providing any future version of the BuildProjex Services), (ii) developing and exploiting new software products, and (iii) (for HBXL's internal business purposes) archiving and retaining such data for HBXL's records.

- 9.4 The Customer agrees that the BuildProjex Services are not designed as being (and are not represented by HBXL as being) a document repository, back-up or data room service. The Customer shall therefore (i) not store any Customer Data solely on the BuildProjex Services, and (ii) ensure that all Customer Data is properly back-up and saved elsewhere.

10. CHARGES AND PAYMENT

- 10.1 The Customer shall pay the Subscription Fees to HBXL for the User Subscriptions in accordance with this clause 10.
- 10.2 Where the Customer has opted to pay by direct debit, the Customer shall provide to HBXL valid, up-to-date and complete bank account or payment card details which are acceptable to HBXL, plus any other relevant contact and billing details. In providing such details to HBXL, the Customer hereby authorises HBXL to collect payment via direct debit as follows:
- 10.2.1 the Subscription Fees which are payable for the Initial Subscription Period; and
 - 10.2.2 subject to clause 10.11, on each anniversary of the Subscription Commencement Date, the Subscription Fees which are payable in respect of the next Renewal Period.
- 10.3 Where the Customer has opted to pay by direct debit the first monthly payment of the Initial Subscription Fee will be collected by direct debit on or about the first monthly direct debit payment date and, thereafter, the Subscription Fees will be collected on or about the same date in each calendar month during the Subscription Period.
- 10.4 In the event that a direct debit payment fails, HBXL may charge an administration fee of ten pounds (£10) which will be added to the next direct debit payment for the Subscription Fees.
- 10.5 In relation to any other charges payable by the Customer under this Agreement, the Customer shall pay any invoices within 14 days of the date of such invoices.
- 10.6 If HBXL has not received payment of any amounts and fees under this Agreement within 10 days after the due date, then without prejudice to any other rights and remedies:
- 10.6.1 HBXL may, without liability to the Customer, immediately disable the Customer's (and any Authorised Users' or Authorised Visitors) password, account and access to the BuildProjex Services, and HBXL shall be under no obligation to provide any or all of the BuildProjex Services while the invoice(s) concerned remain unpaid; and
 - 10.6.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to three per cent

(3%) over the then current base lending rate of HSBC Bank PLC from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

10.7 In relation to payments disputed in good faith, interest under clause 10.6.2 is payable only after the dispute is resolved on sums found or agreed to be due, from the due date until payment.

10.8 If, following expiry of the period referred to in clause 10.6, HBXL has not received payment of any overdue amounts and fees within ten days after the Customer has been notified by HBXL to make such payment, then without prejudice to any other rights and remedies which HBXL may have, the total amount of the Subscription Fees payable in respect of the remainder of the Subscription Period shall become due and payable on demand.

10.9 If, having served notice on the Customer under clause 10.8, HBXL is required to instruct a debt collection agency or solicitor to recover the debt, the Customer shall be liable to reimburse HBXL for all costs and expenses reasonably and necessarily incurred by HBXL in recovering the debt being a sum not less than the amounts specified in section 5A(2) of the Late Payment of Commercial Debts (Interest) Act 1998, by reference to the total value of the debt (including interest) on the date when such notice is given to the Customer.

10.10 All amounts and fees stated or referred to in this Agreement:

10.10.1 shall be payable in pounds sterling;

10.10.2 are non-cancellable and non-refundable;

10.10.3 are exclusive of value added tax, which shall be added to HBXL's invoice(s) at the current rate.

10.11 HBXL shall be entitled to increase the Subscription Fees at the start of each Renewal Period upon 45 days' prior notice to the Customer.

11. PROPRIETARY RIGHTS

11.1 The Customer acknowledges and agrees that HBXL and/or its licensors own all intellectual property rights in the BuildProjex Web Application (including the Subscribed Software) and the Documentation. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the BuildProjex Web Application or the Documentation.

11.2 HBXL confirms that it has all the rights in relation to the BuildProjex Web Application and BuildProjex Services that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

11.3 Subject to clause 13 (Limitation of Liability), HBXL shall defend the Customer, its officers, directors and employees against any claim that the BuildProjex Web Application, BuildProjex Services or Documentation infringes any United Kingdom patent effective as of the Subscription Commencement Date, copyright, trade mark, 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:

11.3.1 HBXL is given prompt notice of any such claim;

11.3.2 the Customer provides reasonable co-operation to HBXL in the defence and settlement of such claim, at HBXL's expense; and

11.3.3 HBXL is given sole authority to defend or settle the claim.

11.4 In the defence or settlement of any claim, HBXL may procure the right for the Customer to continue using the BuildProjex Services, replace or modify the BuildProjex Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on two Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

11.5 In no event shall HBXL, its employees, agents and sub-contractors be liable to the Customer under clause 11.3 to the extent that the alleged infringement is based on:

11.5.1 a modification of the BuildProjex Web Application by anyone other than HBXL; or

11.5.2 the Customer's use of the BuildProjex Web Application or Documentation in a manner contrary to the terms of this Agreement or instructions given to the Customer by HBXL; or

11.5.3 the Customer's use of the BuildProjex Web Application or Documentation after notice of the alleged or actual infringement from HBXL or any appropriate authority.

12. PUBLICITY

12.1 Unless the Customer and HBXL otherwise agree, the Customer hereby grants HBXL a non-exclusive, non-transferable, royalty-free, free-of-charge licence to use its name and logo for HBXL's marketing and promotional purposes during the Subscription Term and for a period of 12 months' after the expiry or termination of this Agreement. The Customer shall not make, or permit any person to make, any public announcement concerning this Agreement without HBXL's prior written consent (not to be unreasonably withheld) except as required by law, any governmental or regulatory authority, any court or other authority of competent jurisdiction.

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

13. LIMITATION OF LIABILITY

13.1 This clause 13 sets out the entire financial liability of HBXL (including any liability for the acts or omissions of its employees, officers, agents and sub-contractors) to the Customer:

13.1.1 arising under or in connection with this Agreement (including, but not limited to, HBXL's liability under clause 7 (Data Protection), clause 8 (HBXL's Obligations) and clause 11 (Proprietary Rights));

13.1.2 in respect of any use made by the Customer of the BuildProjex Services; and

13.1.3 in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

13.2 Except as expressly and specifically provided in this Agreement:

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

13.2.2 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; and

13.2.3 the BuildProjex Services are provided to the Customer on an "as is" basis.

13.3 Nothing in this Agreement excludes the liability of HBXL:

13.3.1 for death or personal injury caused by HBXL's negligence;

13.3.2 for fraud or fraudulent misrepresentation; or

13.3.3 for any other liabilities which cannot be excluded or limited by law.

13.4 Subject to clause 13.2 and clause 13.3:

13.4.1 HBXL shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or 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;

13.4.2 the Customer agrees that the BuildProjex Services are not designed as being (and are not represented or provided by HBXL as being) a document repository, back-up or data room service, and that the Customer is responsible for ensuring that all Customer Data is sufficiently backed-up outside of any services provided by HBXL. HBXL shall therefore have no liability to the Customer, to any Authorised Users, to any Authorised Visitors and/or to any other third parties in respect of any delays, delivery failures, loss of functionality, loss of Customer Data and/or loss of any other data stored on BuildProjex Services; and

13.4.3 and subject to clauses 13.4.1 and 13.4.2, HBXL's total aggregate liability in contract (including but not limited to in respect of any HBXL indemnity obligations within this Agreement), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement or any collateral contract insofar as it relates to the obligations set out in clause 7 shall be limited to the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

13.5 The Customer acknowledges that the BuildProjex Services may enable or assist it to access content from third parties and that it does so solely at its own risk. HBXL makes no representation, warranty or commitment and shall (subject to clauses 13.2 and 13.3) have no liability or obligation whatsoever in relation to the content uploaded by a third-party.

14. TERM AND TERMINATION

14.1 This Agreement shall, unless otherwise terminated as provided in this clause 14, commence on the Subscription Commencement Date and shall continue for the Initial Subscription Period.

14.2 Where the Customer has opted to pay the Subscription Fees by direct debit, this Agreement shall be automatically renewed for successive periods equal in duration to the Initial Subscription Period (each a "Renewal Period"), unless:

14.2.1 either party notifies the other party of termination, in writing, at least 30 days before the end of the Initial Subscription Period or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Subscription Period or Renewal Period; or

14.2.2 otherwise terminated in accordance with the provisions of this Agreement,

and the Initial Subscription Period together with any subsequent Renewal Periods shall constitute the

“Subscription Period”.

14.3 Where a Customer has paid the Initial Subscription Fee upfront, this Agreement shall expire at the end of the Initial Subscription Period unless the Customer renews its subscription. At least one email reminder will be sent to the Customer not less than 30 days before expiry of the Initial Subscription Period. If the Customer does not renew its subscription before expiry of the Initial Subscription Period, HBXL may, without liability to the Customer, disable the Customer’s (and any Authorised Users’ and Authorised Visitors) password, account and access to the BuildProjex Services and HBXL shall be under no obligation to provide any or all of the BuildProjex Services until the Customer has renewed its subscription.

14.4 If the BuildProjex Services are suspended under clause 10.6.1 and the Customer subsequently pays any overdue sums and interest in full, the BuildProjex Services shall be reactivated for the remainder of the Subscription Period.

14.5 Without affecting any other right or remedy available to it, HBXL may terminate this Agreement with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment.

14.6 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

14.6.1 the other party commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

14.6.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

14.6.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

14.6.4 a petition is filed, a notice is given, a resolution is

passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

14.6.5 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);

14.6.6 the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

14.6.7 the other party (being an individual) is the subject of a bankruptcy petition or order;

14.6.8 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.6.2 to clause 14.6.7 (inclusive); or

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

14.7 On termination of this Agreement and with effect from expiry of the Subscription Period or the effective date of termination (as applicable):

14.7.1 all licences granted under this Agreement shall terminate, except for the licences granted in clause 9.3 and clause 12.1 (such licence to continue in accordance with those clauses);

14.7.2 the Customer’s access to the BuildProjex Services shall cease;

14.7.3 HBXL shall not be obliged to provide the Customer with copies of any files or documents uploaded to or produced using the BuildProjex Web Application (such as Customer Data);

14.7.4 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

14.8 HBXL may (but is not obliged to) retain Customer Data following termination or expiry of the Subscription Period, but shall usually delete such retained Customer Data 30 days following termination or expiry of the Subscription Period. HBXL excludes all liability for any corruption to, or loss or deletion of, any Customer Data following termination or expiry of the Subscription Period.

15. NOTICES

- 15.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand, sent by pre-paid first-class post or recorded delivery post or sent by e-mail to the other party using the details set out on the Order Form (or such other details as may have been notified by that party for such purposes).
- 15.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9am 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. A notice sent by e-mail shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

16. GENERAL

- 16.1 Force majeure: HBXL shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including strikes or other industrial disputes (whether involving the workforce of HBXL or any other party), failure of a utility service or telecommunications network, act of God, war, riot, civil commotion, malicious damage, national or regional lockdown, pandemic, disease, 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.
- 16.2 Variation: No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 16.3 Waiver: No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 16.4 Rights and remedies: Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 16.5 Severance: 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.

- 16.6 Entire agreement: 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 they cover.
- 16.7 Non-reliance: Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.
- 16.8 Assignment: The Customer shall not, without the prior written consent of HBXL, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement. HBXL 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.
- 16.9 No partnership or agency: Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 16.10 Third party rights: 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.
- 16.11 Governing law: This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.
- 16.12 Jurisdiction: Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).