

HOME BUYER BEST BUYS LICENCE TERMS AND CONDITIONS

BETWEEN:-

- (1) Home Buyer Systems Ltd whose Registered Office is at: St George's Yard, Castle Street, Farnham, Surrey, GU9 7LW (the "Licensor") and
- (2) "The Licensee"

NOW IT AGREED as follows:-

1. Definitions

In this Agreement unless inconsistent with the context or otherwise specified the following definitions will apply:-

- 1.1 "Acceptance Date" means the date on which the Online Service known as HomeBuyer Best Buys Service from herein known as (HBBS) is accepted or deemed to be accepted by the Licensee pursuant to Clause 4
- 1.2 "Charges" means the charges provision installation, training and ancillary services being provision for the Licence Fee that may be invoiced by the Licensor to the Licensee in connection with this Agreement [which will be calculated on a time and material basis in accordance with the Licensor's then current standard rates]
- 1.3 "Documentation" means the operating Manuals, user instructions and related material supplied to the Licensee by the Licensor
- 1.4 "Website" means the Licensee's Website. The Website shall be deemed to be a single Website computer
- 1.5 "Licence Fee" means the fee specified in the Schedule
- 1.6 "Licence Period" means one month or year from date of last payment made; dependent on the payment option chosen
- 1.7 "Licence Materials" means the HBBS, Documentation and the Media
- 1.8 "Media" means the carrier media on which the HBBS and the Documentation are recorded or printed and delivered to the Licensee
- 1.9 " HBBS " means the online service and all preparatory design material
- 1.10 "Use the HBBS" means to load the HBBS onto and store, run and display the HBBS on the Website in accordance with the terms of this Agreement

2. Grant of Licence

Subject to the terms of this Agreement and consideration of the payment to the Licensor by the Licensee of the Licence Fee, the Licensor grants the Licensee a non-exclusive and non-transferable licence ("the Licence") to use the Licence Material in connection with a single Website in the United Kingdom during the Licence Period. The Licensee will require a separate licence to use the Licence Materials on any other Website or through a multi-user or network system.

3. Delivery and Installation

- 3.1 The Licensor will deliver one copy of the HBBS and the Documentation on the Media to the Licensee.
- 3.2 The Licensee is responsible for installation of the HBBS on the Equipment in accordance with the Installation Guide issued by the Licensor, or at the Licensee's request the Licensor will carry out such installation at the Licensor's then current installation charge.

- 3.3 The Licensor will use all reasonable endeavours to achieve delivery or installation by any specified or requested date but each such date is to be treated as an estimate only and time shall not be of the essence. Where a payment of any part of the Licence Fee or any other Charge is to be made before delivery or installation of the HBBS, the Licensor may withhold delivery or installation until such payments have been received.
- 3.4 Risk in the Media will pass to the Licensee on delivery to the Licensee.
4. **Acceptance**
- 4.1 Acceptance of the HBBS will be deemed to take place on delivery of the HBBS and the Documentation to the Licensee.
- 4.2 If the Licensee uses the HBBS before acceptance under this clause, except for testing purposes as agreed with the Licensor, then the HBBS will be deemed to have been accepted on the date of first use.
5. **Permitted Use**
- 5.1 The Licensee may use the HBBS only on the Website. The Licensee shall be allowed to transfer the HBBS from one Website to another provided the HBBS is installed and used only on one Website at a time. For the avoidance of doubt the Website to which the HBBS has been transferred shall be deemed to be the "Website" for the purposes of this Agreement.
- 5.2 The Licensee may use the Licence Materials for processing its own data for its own internal business purposes only. The Licensee shall not use or attempt to use the Licence Materials or any of the output of the HBBS or permit any third part to do so:-
- 5.2.1 To provide a data processing service to any third party by way of trade or otherwise; or
- 5.2.2 as part of a network, or
- 5.2.3 contrary to any other restrictions stated in this Agreement
- 5.3 The Licensee shall not translate or adapt the Licence Materials for any purpose nor arrange or create derivative works based on the HBBS without the Licensor's express written consent in each case
- 5.4 The Licensee shall not transfer or distribute (whether by licence, loan, rental, sale or otherwise) all or any part of the Licence Materials to any other person
- 5.5 The Licensee shall not make for any purpose, including (without limitation) for error correction any alterations, modifications, additions or enhancement to the HBBS except as specifically described in the Documentation nor permit the whole or any part of the HBBS to be combined with or become incorporated in any other programme except to the extent permitted by clause 7 without the Licensor's prior written consent.
6. **Extent of Permitted Reproduction**
- 6.1 The Licensee is permitted to have a copy of the HBBS on one Website for the duration of this Licence only. Should the Licensee require a copy of HBBS to be displayed on another Website then a further licence/s needs to be applied for
- 6.2 The Licensee shall not use HBBS on more than one Website or permit others to use HBBS on their Website without licence or prior written consent
- 6.3 The Licensee shall effect and maintain adequate security measures to safeguard the Licence Materials from unauthorised access use or copying
7. **Decompilation**
- 7.1 The Licensee shall not nor permit others to decompile, reverse engineer or disassemble the HBBS or any part except that the Licensee may decompile the HBBS to the extent permitted by the subject to the provisions of the EEC HBBS Directive as enacted by the Copyright, Designs and Patent Acts 1988 as amended where this is indispensable to obtain the information necessary to achieve the

interoperability of an independently created programme with the HBBS or with another programme (“the Information”) and the Information is not readily available for the Licensor or elsewhere

7.2 With respect to the Information, whether provided by the Licensor or obtained by decompilation, the Licensee shall not nor permit others to:

7.2.1 Use the Information for any other purpose other than to achieve the interoperability of an independently created programme with the HBBS or other programmes; or

7.2.2 Supply the Information to any other person except where necessary for the interoperability of the independently created programme with the HBBS or other programmes; or

7.2.3 Use the Information for the development, production or marketing of a computer programme or Web service substantially similar in its expression to the HBBS, or for any other copyright infringing act; or

7.2.4 Use the Information in a manner which unreasonably prejudices the Licensor’s legitimate interests or conflicts with a normal exploitation of the HBBS

8. Payment Terms

8.1 The Licensee shall pay to the Licensor the Licence Fee and all other charges which fall due under this Agreement of the amounts and at the times specified in the Schedule hereto or otherwise invoiced by the Licensor from time to time. Where applicable, VAT and other taxes, duties or levies will be paid additionally by the Licensee at the then prevailing rate.

8.2 All sums due under this Agreement will be paid by the Licensee within 30 days of the date or receipt of the invoice or on the due date for the payment specified on the invoice if earlier

8.3 If any sum payable to the Licensor under this Agreement is in arrears for more than 30 days after the due date, the Licensor reserves the right, without prejudice to any other right or remedy, to charge interest on such overdue sum on a day to day basis from the original due date until paid in full at the rate of 3% above Barclays Bank Plc base lending rate in force from time to time

8.4 The Licensee will notify the Licensor in writing within 5 days of receipt of an invoice if the Licensee considers such invoice incorrect or invalid for any reason and the reasons for withholding payment failing which the Licensee will raise no objection to any such invoice and will make full payment in accordance with it

9. Proprietary Rights

9.1 The Licensee will not acquire the title, copyright or other propriety rights in the Licence Materials or any copies of them

9.2 The Licensee agrees not to remove, suppress or modify in any way any propriety marking, including a trademark or copyright notice, on or in the HBBS or which are visible during its operation or which is on the Media or on any documentation. The Licensee shall incorporate such propriety markings and any back-up copies (if authorised)

9.3 The Licensee shall notify the Licensor immediately if the Licensee becomes aware of any unauthorised access to, use or copying of any part of the Licence Materials by any person

9.4 The Licensee shall permit the Licensor to check the use of the Licence Materials by the Licensee at all reasonable times and the Licensee shall irrevocably consent to the Licensor’s representative entering the Licensee’s premises for this purpose

10. Confidentiality

10.1 The Licensee acknowledges that the Licence Materials contain confidential information of the Licensor and/or of the parties. The Licensee undertakes to treat as confidential and to keep secret all information contained in or otherwise received from the Licensor in the connection with the Licence Material (collectively referred to as “the Confidential Information”) and shall not use the same for purposes other than in relation to use of the HBBS in accordance with the Licence

10.2 The Licensee shall not without the Licensor’s prior written consent communicate or disclose any part of the confidential Information to any person except:

10.2.1 only to those employees on a need to know basis who are directly involved in the use of the HBBS

10.2.2 the Licensee's auditors, professional advisers and any other person or bodies having a legal right or duty to have access to or knowledge of the Confidential Information in connection with the business of the Licensee

10.3 The Licensor undertakes to ensure prior to disclosure of any confidential Information that all persons and bodies mentioned in clause 10.2 are aware that the Confidential Information is confidential and that they owe a duty of confidence to the Licensor. The Licensee will indemnify the Licensor against any loss or damage which the Licensor sustains or incurs as a result of the Licensee failing to comply with such undertaking

10.4 Any ideas and principles determined during the course of observing, studying or testing the functions of the HBBS constitute Confidential Information subject to this clause 10

10.5 The provisions of this clause 10 will not apply to any Confidential Information which:

10.5.1 is or becomes public knowledge other than as a result of the Licensee's conduct or

10.5.2 is independently developed without access to or use of the Licence Materials

10.6 This clause 10 will continue in force notwithstanding the termination of this Agreement for any reasons

11. Training

Upon request by the Licensee the Licensor shall provide training in the use of the HBBS at the then charge rate of the Licensor

12. Defects Warranty

12.1 The Licensor warrants that:

12.1.1 The HBBS when properly used on the Equipment will provide the facilities and functions as described in the Documentation and

12.1.2 The Media on which the HBBS is furnished will be free from defects in materials and workmanship under normal use.

The Licensor does not warrant that the operation of the HBBS will be uninterrupted or error free

12.2 The Licensor's obligation and the Licensee's exclusive remedy under the warranty given in clause 12.1 is limited either:

12.2.1 To the Licensor at its own expense using all reasonable endeavours to rectify any non-conformance with the warranty by repair (by way of a patchwork around correction or otherwise (within a reasonable period of time or at the Licensor's option replacement of the HBBS or defective Media in whole or in part or;

12.2.2 To a refund of the Licence Fee paid if in the Licensor's reasonable opinion it is unable to rectify such non-conformance

12.3 The Licensor will have no liability or obligation under the warranty given in this clause 12 unless it has received written notice from the Licensee or any non-conformance with the warranty within 30 days from the Acceptance Date

12.4 The Licensee acknowledges that the Licence Materials have not been prepared to meet the Licensee's individual requirements and that it is the Licensee's responsibility to ensure that the facilities and functions of the HBBS meets the Licensee's requirements and is compatible with the Equipment

12.5 The Licensor will not be liable for any failure of the HBBS attributable to any modification (whether by alteration, deletion, addition or otherwise) the HBBS or Equipment by either the Licensee or other persons or by a combination of the HBBS with other HBBS or equipment

12.6 If a problem is found upon investigation not to be the Licensor's responsibility under the provisions of this clause 12, the Licensor may charge the Licensee immediately for all reasonable costs and expenses incurred by the Licensor in the course of or in consequence of such investigation

13 Limitation of Liability

13.1 The Licensee acknowledges that the Licensor's obligations and liabilities in respect of the Licence Materials are exhaustively defined in this Agreement. the Licensee agrees that the express obligations and warranties made by the Licensor in this Agreement are in lieu of and to the exclusion of any kind, express or implied, statutory or otherwise relating to anything supplied or services provided under or in connection with this Agreement including (without limitation) as to this condition, quality, performance, merchantability or fitness for the purpose of the Licence Materials or any part of them

13.2 The Licensee is responsible for the consequences of any use of the Licence Materials. the Licensor will not be liable for any indirect or consequential loss, damage, cost or expense of any kind whatever and however caused, whether arising under contract, tort or otherwise, including (without limitation) loss of production, loss of operation time and loss of goodwill or anticipated savings, even if the Licensor has been advised of their possibilities

13.3 The Licensor accepts liability to the extent that it results from the negligence of the Licensor and its employees for:

13.3.1 death or personal injury without limit damage caused by defect in the HBBS within the meaning of the Consumer Protection Act 1987 Part 1 without limit

13.4 In all other cases not falling within clause 13.3 the Licensor's total liability (whether in contract, tort or otherwise) under or in connection with this Agreement and any other agreement with the Licensor relating to the HBBS or based on any claim for indemnity or contribution and not exceeding in the aggregate the total of the charges paid by the Licensee

13.5 The Licensee acknowledges and agrees that the allocation of risk contained in this clause 13 is reflected in the Licence Fee and is also a recognition of the fact that, inter alia, the HBBS cannot be tested in every possible combination and it is not within the Licensor's control how and for what purposes the Licence Materials are used by the Licensee

14. Copyright Indemnity

14.1 Subject to clause 13, the Licensor will indemnify the Licensee for its reasonable costs and all damages awarded any final judgment by a Court of competent jurisdiction or agreed by the Licensor in final settlement to the extent the HBBS as used in accordance with the Licence infringes the copyright of any third party provided that;

14.1.1 The Licensee makes no statement prejudicial to the Licensor

14.1.2 Such infringement is not caused by or contributed to by acts of the Licensee other than the use of the HBBS in accordance with the Licence

14.1.3 The Licensor is promptly notified in writing of the details of the claim

14.1.4 The Licensor has the sole control of the defence of such claim and all related settlement negotiations and;

14.1.5 The Licensee gives the Licensor all reasonable assistance at the Licensor's expense in connection with it

14.2 If at any time an allegation of infringement of any third party right is made, or in the Licensor's opinion is likely to be made, in respect of the Licence Materials the Licensor may at its own expenses:

14.2.1 Obtain for the Licensee the right to continue using the Licence Materials; or

14.2.2 Modify or replace the Licence Materials so as to avoid infringement

14.3 The Licensor will have no liability for any claim of infringement based on:

- 14.3.1 The use of other than the latest unaltered current release of the HBBS; or
- 14.3.2 the use or combination of the HBBS with equipment (other than the Equipment) programmes or data not supplied by the Licensor; or
- 14.3.3 the Licensee's refusal to use modified or replacement Licence Materials supplied or offered to be supplied pursuant to clause 14.2

14.4 this clause 14 states the entire liability of the Licensor in respect to the infringement or the alleged infringement of any third party right of any kind relating to the Licence Materials

15. Termination

15.1 The Licensee may terminate the Licence at any time by written notice to the Licensor and by returning the HBBS

15.2 The Licensor may, without prejudice to any other of its rights or remedies and without being liable to the Licensee for any loss or damage which may be occasioned, give written notice to the Licensee terminating this Agreement with immediate effect if the Licensee:-

15.2.1 Expressly or impliedly repudiates this Agreement by refusing or threatening to refuse to comply with any of the provisions of this Agreement; or

15.2.2 Fails to comply with any of the provisions of this Agreement and (in the case of failure capable of being remedied) does not rectify such non-compliance within 14 working days of the Licensor's written notice of it; or

15.2.3 convenes any meeting of creditors or passes a resolution for winding-up or suffers a petition for winding-up; or

15.2.4 Has an administrative receiver or receiver appointed over the whole or part of its assets or suffers the appointment of an administrator; or

15.2.5 Being an individual commits any act of bankruptcy or compounds with its creditors or comes to any arrangements with any creditors

16. Post Termination

16.1 On termination of the Licence however caused the Licensee's authorisation to use the Licence Material will automatically cease and the Licensee undertakes immediately to cease the use of the Licence Materials and to return to the Licensor the HBBS and all copies of it by registered post or, if requested by the Licensor, delete, destroy or otherwise make permanently unusable the HBBS and all copies (if any)

16.2 Within 7 days of the date of termination, the Licensee shall return to the Licensor all copies of the Documentation unless notified in writing to the contrary by the Licensor

16.3 Within 30 days of the date of termination the Licensee shall certify to the Licensor in writing that it has fully complied with its obligations under clause 16.1 and 16.2. Where the Licensee is a company such certification is to be made by a director of the Company

16.4 Termination of the Licence however caused will not affect the rights of either party under this Agreement which may have accrued up to the date of termination

17. Renewal of Licence

17.1 The Licensee may renew the Licence for a further 12 month period by written application ("Application") to the Licensor and by paying the current licence renewal fee applicable as at the date of renewal ("Renewal Fee")

17.2 The Application must be received by the Licensor at least one month prior to the anniversary date of the current Licence

17.3 The Renewal Fee shall be payable on the anniversary date of the current Licence

17.4 The Licensor reserves the right to refuse to renew the Licence for whatever reason and in that event the Licensee shall fully comply with the provisions contained in clause 16

17.5 The HBBS shall automatically cease to operate on the expiry of the Term and the Licensor shall reinstate the operation of the HBBS on receipt of cleared funds representing the Renewal Fee.

18. **Force Majeure**

Neither party will be liable for any delay in performing or failure to perform its obligations (other than a payment obligation) under this Agreement due to any cause outside its reasonable control. Such delay or failure will not constitute a breach of this Agreement and the time for performance of the affected obligation will be extended by such period as is reasonable.

19. **Assignment**

The Licence is personal to the Licensee and the Licensee may not assign or otherwise transfer its rights and obligations under this Agreement.

20. **Notices**

All notices which are required to be given under this Agreement will be in writing and will be sent to the address of the recipient set out on the front page of this Agreement. Such notices shall be deemed to have been received if sent by post 48 hours after the date of mailing or if by facsimile transmission immediately on transmission provided that a confirmatory copy is sent by first class pre-paid post the next business day.

21. **Severability**

If any part of this Agreement is found by a Court of competent jurisdiction or other competent authority to be invalid, unlawful or unenforceable then such part will be severed from the remainder of this Agreement which will continue to be valid and enforceable to the fullest extent permitted by the law.

22. **Waiver**

No delay or failure by either party to exercise any of its powers, rights or remedies under this Agreement will operate as a waiver of them nor will any single or partial exercise of any such powers, rights or remedies preclude any other or further exercise of them.

23. **Entire Agreement**

This Agreement is the complete and exhaustive statement of the agreement between the parties relating to the subject matter of the Agreement and supersedes all previous communications, representations and arrangements, written or oral. No change to this Agreement's terms will be effective unless it is in writing and signed by persons authorised on behalf of both parties

24. **Governing Law**

This Agreement will be construed in accordance with and governed by the Law of England and Wales and each party agrees to submit to the non-exclusive jurisdiction of the Courts of England and Wales. Headings have been included for convenience only and will not be used in construing any provision of this Agreement.