

## CREATIVE BUILDING PERFORMANCE LIMITED END USER LICENCE AGREEMENT

This licence agreement (**Licence**) is a legal agreement between you (**Licensee** or **you**) and Creative Building Performance Limited, a company registered in Scotland with company number SC613975, whose registered office is at 19 Alloway Road, Maybole, Ayrshire (the "**Licensor**", "**us**" or "**we**") for:

- Insight Platform Software selected by you prior to purchase, as described in Section 3 of the Sales Document [[insert hyperlink](#)] (**Software**) ; and
- printed materials and electronic documents (**Documents**).

We license use of the Software and Documents to you on the basis of this Licence. We do not sell the Software or Documents to you. We remain the owners of the Software and Documents at all times.

### 1 Purchase Order

- 1.1 Prior to granting a licence to use the Software and providing the Services to you, we shall enter into a purchase order with you, whereby you and we shall confirm the Software and services (as described in the Sales Document) (the "**Services**") that you will purchase ("**Purchase Order**").
- 1.2 In the event of any conflict between the terms of this Licence and the terms of the Purchase Order, the terms of the Purchase Order shall take precedence.

### 2 Services

- 2.1 If agreed by the Purchase Order, we shall provide you with the Services as detailed in the Sales Document on the rates set out in Section 3 of the Sales Document payable by you in accordance with the Purchase Order.
- 2.2 We will provide the Services to you in accordance with the Service Levels, detailed in Section 6 of the Sales Document.

### 3 Grant and scope of licence

- 3.1 This Licence shall commence on the date set out in the Purchase Order (the "**Commencement Date**") and shall continue for a trial period of thirty (30) days ("**Trial Period**"). Subject to you agreeing to abide by the terms of this Licence, we grant to you a non-exclusive, non-transferable licence to use the Software and the Documents as set out in the Purchase Order for the Trial Period on the terms of this Licence. During the Trial Period, you shall have the right to cancel this Licence at any time with immediate effect by giving notice to us in writing.
- 3.2 On the last date of the Trial Period, you shall make payment of the agreed Licence Fees detailed in Section 3 of the Sales Document and as agreed in the Purchase Order. Following this payment being

made, the Licence shall continue to renew automatically each month unless and until terminated in accordance with condition 9 (the "**Term**").

3.3 In consideration of payment by you of the agreed Licence Fees detailed in Section 3 of the Sales Document and agreed in the Purchase Order and you agreeing to abide by the terms of this Licence, we grant to you a non-exclusive, non-transferable licence to use the Software and the Documents for the Term on the terms of this Licence.

3.4 You may:

3.4.1 download, install and use the Software for your internal business purposes only;

3.4.2 receive and use any supplementary software code or update of the Software incorporating corrections of errors as may be provided by us from time to time as part of the Services; and

3.4.3 use any Documents in support of the use permitted under condition 3.4 and make copies of the Documents as are reasonably necessary for their lawful use.

3.5 The Software will be updated on a quarterly basis. You may either continue using your current version of the Software or use the updated version.

#### **4 Restrictions**

4.1 Except as expressly set out in this Licence or as permitted by any local law, you undertake:

4.1.1 not to copy the Software or Documents except where such copying is incidental to normal use of the Software, or where it is necessary for the purpose of back-up or operational security;

4.1.2 not to rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the Software or Documents;

4.1.3 not to make alterations to, or modifications of, the whole or any part of the Software, nor permit the Software or any part of it to be combined with, or become incorporated in, any other programs;

4.1.4 not to disassemble, decompile, reverse-engineer or create derivative works based on the whole or any part of the Software nor attempt to do any such thing except to the extent that (by virtue of section 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are essential for the purpose of achieving inter-

operability of the Software with another software program, and provided that the information obtained by you during such activities:

- 4.1.4.1 is used only for the purpose of achieving inter-operability of the Software with another software program; and
- 4.1.4.2 is not unnecessarily disclosed or communicated without our prior written consent to any third party; and
- 4.1.4.3 is not used to create any software which is substantially similar to the Software;
- 4.1.5 to keep all copies of the Software secure and to maintain accurate and up-to-date records of the number and locations of all copies of the Software;
- 4.1.6 to supervise and control use of the Software and ensure that the Software is used by your employees and representatives in accordance with the terms of this Licence;
- 4.1.7 to include our copyright notice on all entire and partial copies you make of the Software on any medium;
- 4.1.8 not to provide or otherwise make available the Software in whole or in part (including but not limited to program listings, object and source program listings, object code and source code), in any form to any person other than your employees without prior written consent from us, or to otherwise use the Software to provide services to or in a way that otherwise provides a benefit to any third party; and
- 4.1.9 to comply with all applicable technology control or export laws and regulations.

## **5 Fees**

- 5.1 You will pay the Licence Fee in accordance with the payment schedule set out in the Purchase Order. Such Licence Fee payable may, at our sole discretion, be subject to an annual increase. We will inform you of any change in the Licence Fee at least one month before the change takes effect.
- 5.2 All sums payable under this licence are exclusive of VAT or any relevant local sales taxes, for which you shall be responsible.
- 5.3 If you fail to make any payment due to us under this Licence by the due date for payment, then, without limiting our remedies under this Licence, we may at our discretion suspend your access to the Software and/or terminate this Licence by giving writing notice in accordance with condition 9.1.12

## 6 Intellectual property rights

- 6.1 You acknowledge that all intellectual property rights in the Software, the Documents and the Services anywhere in the world belong to us, that rights in the Software are licensed (not sold) to you, and that you have no rights in, or to, the Software, the Documents or the Services other than the right to use them in accordance with the terms of this Licence.
- 6.2 You acknowledge that you have no right to have access to the Software in source code form.
- 6.3 We acknowledge that the data provided by you to be held in the Software belongs to you. In circumstances where you instruct us to support the installation of your Software and we have access to your data, you hereby grant us a non-exclusive, royalty free, perpetual and irrevocable right to use such data for the purpose of providing the Software, Documents and Services under this Licence and for the purposes of carrying out analytics on use of the Software.

## 7 Limited warranty

- 7.1 We warrant that:
- 7.1.1 the Software will, when properly used and on an operating system for which it was designed, perform substantially in accordance with the functions described in the Documents; and
  - 7.1.2 that the Documents correctly describe the operation of the Software in all material respects, for a period of 90 days from the date of your installation the Software (**Warranty Period**).
- 7.2 If, within the Warranty Period, you notify us in writing of any defect or fault in the Software as a result of which it fails to perform substantially in accordance with the Documents, we will, at our sole option, either repair or replace the Software at no additional cost to you, provided that you make available all the information that may be necessary to help us to remedy the defect or fault, including sufficient information to enable us to recreate the defect or fault.
- 7.3 The warranty does not apply:
- 7.3.1 if the defect or fault in the Software results from you having altered or modified the Software or used it for a purpose other than as contemplated by the Documents;
  - 7.3.2 if the defect or fault in the Software arises from use of the Software with any hardware or software not provided or otherwise approved by us; and
  - 7.3.3 if the defect or fault in the Software results from you having used the Software in breach of the terms of this Licence.

7.4 Except to the extent provided for under condition 7.1, we do not warrant that the use of the Software will be uninterrupted or error-free.

## **8 Limitation of liability**

8.1 You acknowledge that the Software and Services have not been developed to meet your individual requirements, including any particular cybersecurity requirements you might be subject to under law or otherwise, and that it is therefore your responsibility to ensure that the Services and the facilities and functions of the Software as described in the Documents meet your requirements.

8.2 We only supply the Software and Documents and Services for internal use by your business, and you agree not to use the Software or Documents or Services for any re-sale purposes.

8.3 We shall not in any circumstances whatever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Licence for:

8.3.1 loss of profits, sales, business, or revenue;

8.3.2 business interruption;

8.3.3 loss of anticipated savings;

8.3.4 loss or corruption of data or information;

8.3.5 loss of business opportunity, goodwill or reputation;

where any of the losses set out in condition 8.3.1 to condition 8.3.5 are direct or indirect; or

8.3.6 any special, indirect or consequential loss, damage, charges or expenses.

8.4 Other than the losses set out in condition 8.3 (for which we are not liable), our maximum aggregate liability under or in connection with this Licence whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to a sum equal to one hundred percent (100%) of the total fees paid by you during the relevant contract year, including the Licence Fees and the fees payable for the Services. This maximum cap does not apply to condition 8.5. In this condition 8.4, "contract year" shall mean the twelve (12) month period beginning with the first month for which the Licence is in effect, and each successive period of twelve (12) months.

8.5 Nothing in this Licence shall limit or exclude our liability for:

8.5.1 death or personal injury resulting from our negligence;

8.5.2 fraud or fraudulent misrepresentation;

- 8.5.3 any other liability that cannot be excluded or limited by English law.
- 8.6 This Licence sets out the full extent of our obligations and liabilities in respect of the supply of the Software and Documents and Services. Except as expressly stated in this Licence, there are no conditions, warranties, representations or other terms, express or implied, that are binding on us. Any condition, warranty, representation or other term concerning the supply of the Software and Documents or providing of the Services which might otherwise be implied into, or incorporated in, this Licence whether by statute, common law or otherwise, is excluded to the fullest extent permitted by law.

## **9 Termination**

- 9.1 We may terminate this Licence immediately by written notice to you if:
- 9.1.1 you commit a material or persistent breach of this Licence which you fail to remedy (if remediable) within 14 days after the service of written notice requiring you to do so; or
  - 9.1.2 you suspend, or threaten to suspend, payment of your debts or are unable to pay your debts as they fall due or admit inability to pay your debts or are deemed unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986;
  - 9.1.3 you commence negotiations with all or any class of your creditors with a view to rescheduling any of your debts, or make a proposal for or enter into any compromise or arrangement with your creditors other than for the sole purpose of a scheme for your solvent amalgamation with one or more other companies or your solvent reconstruction;
  - 9.1.4 you apply to court for, or obtain, a moratorium under Part A1 of the Insolvency Act 1986;
  - 9.1.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with your winding up other than for the sole purpose of a scheme for a solvent amalgamation with one or more other companies or the solvent reconstruction;
  - 9.1.6 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 you (being a company, partnership or limited liability partnership);
  - 9.1.7 the holder of a qualifying floating charge over the assets of that you (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;

- 9.1.8 a person becomes entitled to appoint a receiver over your assets or a receiver is appointed over your assets;
  - 9.1.9 a creditor or encumbrancer of you attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of your assets and such attachment or process is not discharged within 14 days;
  - 9.1.10 any event occurs, or proceeding is taken, with respect to you in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 9.1.2 to condition 9.1.9 (inclusive);
  - 9.1.11 you suspend or cease, or threaten to suspend or cease, carrying on all or a substantial part of its business; or
  - 9.1.12 you fail to make payment when due as set out in condition 5.3.
- 9.2 Either party can terminate this Licence for convenience by giving thirty (30) days' notice to the other party in writing.
- 9.3 On termination for any reason:
- 9.3.1 any Licence Fees payable up until the date that termination takes effect shall remain payable by you;
  - 9.3.2 all rights granted to you under this Licence shall cease and you shall no longer have access to the Software;
  - 9.3.3 you must immediately cease all activities authorised by this Licence; and
  - 9.3.4 you must immediately and permanently delete or remove the Software from all computer equipment in your possession or used by you, and immediately destroy or return to us (at our option) all copies of the Documents then in your possession, custody or control and, in the case of destruction, certify to us that you have done so.

## **10 Confidentiality**

- 10.1 You acknowledge that the Software and the Documents comprise information that is confidential to us. You will not without our prior written consent disclose to any third party (except your professional advisors or as may be required by any law or any legal or regulatory authority) any information of a confidential nature (including trade secrets and information of commercial value) which may become known to you from us and which relates to us, unless that information is public knowledge or already

known to you at the time of disclosure, or subsequently becomes public knowledge other than by breach of this Licence, or subsequently comes lawfully into your possession from a third party.

## **11 Variations**

11.1 No variation of this Licence shall be effective unless it is in writing and signed by you and us.

## **12 Communications between us**

12.1 If we have to contact you, we will do so by email or by pre-paid post to the address you provided in accordance with your order for the Software and Services.

12.2 Note that any notice:

12.2.1 given by us to you will be deemed received and properly served 24 hours after it is first posted on our website, 24 hours after an email is sent, or three days after the date of posting of any letter; and

12.2.2 given by you to us will be deemed received and properly served 24 hours after an email is sent, or three days after the date of posting of any letter.

12.3 In proving the service of any notice, it will be sufficient to prove, in the case of posting on our website, that the website was generally accessible to the public for a period of 24 hours after the first posting of the notice; in the case of a letter, that such letter was properly addressed, stamped and placed in the post to the address of the recipient given for these purposes; and, in the case of an email, that such email was sent to the email address of the recipient given for these purposes.

## **13 Events outside our control**

13.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under this Licence that is caused by an Event Outside Our Control. An Event Outside Our Control is defined below in condition 13.2.

13.2 An "**Event Outside Our Control**" means any act or event beyond our reasonable control, including without limitation failure of public or private telecommunications networks.

13.3 If an Event Outside Our Control takes place that affects the performance of our obligations under this Licence:

13.3.1 our obligations under this Licence will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control; and



- 13.3.2 we will use our reasonable endeavours to find a solution by which our obligations under this Licence may be performed despite the Event Outside Our Control.

#### **14 How we may use your personal information**

Under data protection legislation, we are required to provide you with certain information about who we are, how we process the personal data of those individuals who use the Software and the Documents and the Services and for what purposes and those individuals' rights in relation to their personal data and how to exercise them. This information is provided in [\[LINK TO PRIVACY NOTICE\]](#) and it is important that you read that information.

#### **15 Other important terms**

- 15.1 We may transfer our rights and obligations under this Licence to another organisation, but this will not affect your rights or our obligations under this Licence.
- 15.2 You may only transfer your rights or your obligations under this Licence to another person if we agree in writing.
- 15.3 This Licence and any document expressly referred to in it constitutes the entire agreement between us and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between us, whether written or oral, relating to its subject matter. You agree that you shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Licence or any document expressly referred to in it. You agree that you shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Licence or any document expressly referred to in it.
- 15.4 If we fail to insist that you perform any of your obligations under this Licence, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you and will not mean that you do not have to comply with those obligations. If we do waive a default by you, we will only do so in writing signed by us, and that will not mean that we will automatically waive any later default by you.
- 15.5 Each of the conditions of this Licence operates separately. If any court or competent authority decides that any of them are unlawful or unenforceable, the remaining conditions will remain in full force and effect.
- 15.6 A person who is not a party to this agreement shall not have any rights under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce any term of this agreement, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

15.7 This Licence, its subject matter and its formation (and any non-contractual disputes or claims) are governed by Scots law. We both irrevocably agree to the exclusive jurisdiction of the Scottish Courts.