

**THIS AGREEMENT made on 25<sup>th</sup> May 2018**

**PARTIES:-**

- (1) Visionbase Software Limited incorporated and registered in England and Wales with company number 03011382 whose registered office is at Omega Court, 370 Cemetery Road, Sheffield, S11 8FT (**Visionbase Software Ltd**); and
- (2) CUSTOMER OF VISIONBASE SOFTWARE LIMITED

**BACKGROUND**

- (A) The parties intend to enter into discussions relating to the Purpose which will involve the exchange of Confidential Information between them.
- (B) The parties have agreed to comply with this agreement in connection with the disclosure and use of Confidential Information.

**AGREED TERMS**

- "Agreed Purposes";** the performance by each party of its obligations under this agreement.
- "Business Day";** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
- "Confidential Information";** has the meaning given in clause 2.
- "Controller, data controller, processor, data processor, data subject, personal data, processing and organisational measures";** As set out in the Data Protection Legislation in force at the time.
- "Data Protection Legislation";** (i) the Data Protection Act 1998, until the effective date of its repeal (ii) the General Data Protection Regulation ((EU) 2016/679) (GDPR) and any national implementing laws, regulations and secondary legislation, for so long as the GDPR is effective in the UK, and (iii) any successor legislation to the Data Protection Act 1998 and the GDPR, in particular the Data Protection Bill 2017-2019, once it becomes law.
- "Discloser";** a party to this agreement when it discloses its Confidential Information, directly or indirectly, to the other party.
- "Group";** in relation to a company, that company, any subsidiary or any holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company. Each company in a Group is a member of the Group.
- "Group Company";** in relation to a company, any member of its Group.
- "Holding company";** has the meaning give in clause 1.2.5.

<b>“Permitted Recipients”;</b>	the parties to this agreement, the employees of each party and any third parties engaged to perform obligations in connection with this agreement.
<b>"Purpose";</b>	utilisation of products, developed by Vision including but not limited to landlord manager and Decorus for sage.
<b>"Recipient";</b>	a party to this agreement when it receives Confidential Information, directly or indirectly, from the other party.
<b>"Representative(s)";</b>	in relation to each party and any member of its Group: its officers and employees that need to know the Confidential Information for the Purpose; its professional advisers or consultants who are engaged to advise that party and/or any member of its Group in connection with the Purpose; its contractors and sub-contractors engaged by that party and/or any member of its Group in connection with the Purpose; and any other person to whom the other party agrees in writing that Confidential Information may be disclosed in connection with the Purpose.
<b>“Shared Personal Data”;</b>	the personal data to be shared between the parties under clause 11.1 of this agreement, Shared Personal Data shall be confined to the following categories of information a). relevant to the following categories of data subject:  b). names of current and potential customers; c). their geographical and email addresses; and their home and mobile telephone numbers.
<b>"Subsidiary";</b>	has the meaning give in clause 1.2.5.

**1. INTERPRETATION**

**1.1 Definitions:**

## 1.2 Interpretation.

- 1.2.1 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- 1.2.2 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.
- 1.2.3 A reference to **writing** or **written** includes [fax and] email.
- 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 A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006.
- 1.2.6 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

## 2. CONFIDENTIAL INFORMATION

- 2.1 **Confidential Information** means all confidential information relating to the Purpose which the Discloser or its Representatives or any of its Group Companies, or their Representatives directly or indirectly discloses, or makes available, to the Recipient or its Representatives or any of its Group Companies, or their Representatives, before, on or after the date of this agreement. This includes:
  - 2.1.1 the fact that discussions and negotiations are taking place concerning the Purpose and the status of those discussions and negotiations;
  - 2.1.2 the terms of this agreement;
  - 2.1.3 all confidential or proprietary information relating to:
    - 2.1.3.1 the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the Discloser or of any of the Discloser's Group Companies; and
    - 2.1.3.2 the operations, processes, product information, know-how, technical information, designs, trade secrets or software of the Discloser, or of any of the Discloser's Group Companies;

- 2.1.4 any information, findings, data or analysis derived from Confidential Information; and
- 2.1.5 any other information that is identified as being of a confidential or proprietary nature.

but excludes any information referred to in clause 2.2.

**2.2 Information is not Confidential Information if:**

- 2.2.1 it is, or becomes, generally available to the public other than as a direct or indirect result of the information being disclosed by the Recipient or its Representatives or by any of the Recipient's Group Companies or their Representatives in breach of this agreement (except that any compilation of otherwise public information in a form not publicly known shall still be treated as Confidential Information);
- 2.2.2 it was available to the Recipient on a non-confidential basis prior to disclosure by the Discloser;
- 2.2.3 it was, is, or becomes available to the Recipient on a non-confidential basis from a person who, to the Recipient's knowledge, is not under any confidentiality obligation in respect of that information;
- 2.2.4 it was lawfully in the possession of the Recipient before the information was disclosed by the Discloser;
- 2.2.5 it is developed by or for the Recipient independently of the information disclosed by the Discloser; or
- 2.2.6 the parties agree in writing that the information is not confidential.

**3. CONFIDENTIALITY OBLIGATIONS**

**3.1 In return for the Discloser making Confidential Information available to the Recipient, the Recipient undertakes to the Discloser that it shall:**

- 3.1.1 keep the Confidential Information secret and confidential;
- 3.1.2 not use or exploit the Confidential Information in any way except for the Purpose;
- 3.1.3 not directly or indirectly disclose or make available any Confidential Information in whole or in part to any person, except as expressly permitted by, and in accordance with this agreement; and
- 3.1.4 not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the Purpose. Any such copies, reductions to writing and records shall be the property of the Discloser.

3.2 The Recipient shall establish and maintain adequate security measures (including any reasonable security measures proposed by the Discloser from time to time) to safeguard the Confidential Information from unauthorised access or use.

#### **4. PERMITTED DISCLOSURE**

##### **4.1 Disclosure to Representatives.**

4.1.1 The Recipient may disclose the Confidential Information to its Representatives, any of its Group Companies, or their Representatives on the basis that it:

4.1.1.1 informs those Representatives, Group Companies or their Representatives of the confidential nature of the Confidential Information before it is disclosed; and

4.1.1.2 procures that those Representatives, Group Companies or their Representatives comply with the confidentiality obligations in clause 3.1 as if they were the Recipient.

4.1.2 The Recipient shall be liable for the actions or omissions of the Representatives, any of its Group Companies or their Representatives in relation to the Confidential Information as if they were the actions or omissions of the Recipient.

#### **5. MANDATORY DISCLOSURE**

5.1 Subject to the provisions of this clause 5, a party may disclose Confidential Information to the minimum extent required by:

5.1.1 an order of any court of competent jurisdiction or any regulatory, judicial, governmental or similar body or any taxation authority of competent jurisdiction;

5.1.2 the rules of any listing authority or stock exchange on which its shares or those of any of its Group Companies are listed or traded; or

5.1.3 the laws or regulations of any country to which its affairs or those of any of its Group Companies are subject.

5.2 Before a party discloses any Confidential Information pursuant to clause 5.1 it shall, to the extent permitted by law, use all reasonable endeavours to give the other party as much notice of this disclosure as possible. Where notice of such disclosure is not prohibited and is given in accordance with clause 5.2, that party shall take into account the reasonable requests of the other party in relation to the content of this disclosure.

5.3 If a party is unable to inform the other party before Confidential Information is disclosed pursuant to clause 5.1 it shall, to the extent permitted by law, inform the

other party of the full circumstances of the disclosure and the information that has been disclosed as soon as reasonably practicable after such disclosure has been made.

## **6. RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION**

6.1 If so requested by the Discloser at any time by notice in writing to the Recipient, the Recipient shall:

6.1.1 destroy or return to the Discloser all documents and materials (and any copies) containing, reflecting, incorporating or based on the Discloser's Confidential Information;

6.1.2 erase all the Discloser's Confidential Information from its computer and communications systems and devices used by it, or which is stored in electronic form; and

6.1.3 to the extent technically and legally practicable, erase all the Discloser's Confidential Information which is stored in electronic form on systems and data storage services provided by third parties; and

6.1.4 certify in writing to the Discloser that it has complied with the requirements of this clause 6.1.

6.2 Nothing in clause 6.1 shall require the Recipient to return or destroy any documents and materials containing or based on the Discloser's Confidential Information that the Recipient is required to retain by applicable law, or to satisfy the requirements of a regulatory authority or body of competent jurisdiction or the rules of any listing authority or stock exchange, to which it is subject. The provisions of this agreement shall continue to apply to any documents and materials retained by the Recipient pursuant to this clause 6.2.

## **7. RESERVATION OF RIGHTS AND ACKNOWLEDGEMENT**

7.1 Each party reserves all rights in its Confidential Information. The disclosure of Confidential Information by one party does not give the other party or any other person any licence or other right in respect of any Confidential Information beyond the rights expressly set out in this agreement.

7.2 Except as expressly stated in this agreement, neither party makes any express or implied warranty or representation concerning its Confidential Information, including but not limited to the accuracy or completeness of the Confidential Information.

7.3 The disclosure of Confidential Information by the parties shall not form any offer by, or representation or warranty on the part of, that party to enter into any further agreement with the other party in relation to the Purpose.

## **8. INADEQUACY OF DAMAGES**

Without prejudice to any other rights or remedies that each party may have, each party acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this agreement by the other party. Accordingly, each party shall be entitled to the remedies of injunctions, specific performance or other equitable relief for any threatened or actual breach of this agreement.

## **9. NO OBLIGATION TO CONTINUE DISCUSSIONS**

Nothing in this agreement shall impose an obligation on either party to continue discussions or negotiations in connection with the Purpose, or an obligation on each party, or any of its Group Companies to disclose any information (whether Confidential Information or otherwise) to the other party.

## **10. ENDING DISCUSSIONS AND DURATION OF CONFIDENTIALITY OBLIGATIONS**

- 10.1 If either party decides not to continue to be involved in the Purpose with the other party, it shall notify that other party in writing immediately.
- 10.2 Notwithstanding the end of discussions between the parties in relation to the Purpose pursuant to clause 10.1, each party's obligations under this agreement shall continue in full force and effect for a period of two years from the date of this agreement.
- 10.3 The end of discussions relating to the Purpose shall not affect any accrued rights or remedies to which either party is entitled.

## **11. DATA PROTECTION**

- 11.1 **Shared Personal Data.** This clause sets out the framework for the sharing of personal data between the parties as data controllers. Each party acknowledges that one party (the Data Discloser) will regularly disclose to the other party (the Data Recipient) Shared Personal Data collected by the Data Discloser for the Agreed Purposes.
- 11.2 **Effect of non-compliance with Data Protection Legislation.** Each party shall comply with all the obligations imposed on a controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one party shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate this agreement with immediate effect.
- 11.3 **Particular obligations relating to data sharing.** Each party shall:

- 11.3.1 ensure that it has all necessary notices and consents in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;
  - 11.3.2 give full information to any data subject whose personal data may be processed under this agreement of the nature of such processing. This includes giving notice that, on the termination of this agreement, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;
  - 11.3.3 process the Shared Personal Data only for the Agreed Purposes;
  - 11.3.4 not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
  - 11.3.5 ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this agreement;
  - 11.3.6 ensure that it has in place appropriate technical and organisation measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data;
  - 11.3.7 not transfer any personal data received from the Data Discloser outside the EEA unless the transferor:
    - 11.3.7.1 complies with the provisions of Article 26 of the GDPR (in the event the third party is a joint controller); and
    - 11.3.7.2 ensures that (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 GDPR; (ii) there are appropriate safeguards in place pursuant to Article 46 GDPR; or (iii) one of the derogations for specific situations in Article 49 GDPR applies to the transfer.
- 11.4 **Mutual assistance.** Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:
- 11.4.1 consult with the other party about any notices given to data subjects in relation to the Shared Personal Data;
  - 11.4.2 promptly inform the other party about the receipt of any data subject access request;
  - 11.4.3 provide the other party with reasonable assistance in complying with any data subject access request;
  - 11.4.4 not disclose or release any Shared Personal Data in response to a data subject access request without first consulting the other party wherever possible;

- 11.4.5 assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - 11.4.6 notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;
  - 11.4.7 at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this agreement unless required by law to store the personal data;
  - 11.4.8 use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;
  - 11.4.9 maintain complete and accurate records and information to demonstrate its compliance with this clause 11 and allow for audits by the other party or the other party's designated auditor; and
  - 11.4.10 provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach and the regular review of the parties' compliance with the Data Protection Legislation.
- 11.5 **Indemnity.** Each party shall indemnify the other against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the indemnified party arising out of or in connection with the breach of the Data Protection Legislation by the indemnifying party, its employees or agents, provided that the indemnified party gives to the indemnified prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it.

## **12. NO PARTNERSHIP OR AGENCY**

- 12.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 12.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

### 13. GENERAL

13.1 **Assignment and other dealings.** Neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

#### 13.2 Entire agreement.

13.2.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

13.2.2 Each party agrees that it 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 agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

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

13.4 **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.

13.5 **Severance.** If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

#### 13.6 Notices.

13.6.1 Any notice or other communication given to a party under or in connection with this agreement shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier or e-mail.

13.6.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.6.1;

if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one Business Day after transmission.

13.6.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

**13.7 Third party rights.**

13.7.1 This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

**13.8 Governing law.** This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

**13.9 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

Signed as a Deed by for and on  
behalf of Visionbase Software  
Limited

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Behalf of .....