

DATED

ESTATE AGENT A (1)

And

HIPS ASSURED LIMITED (2)

HOME INFORMATION PACK (HIP) SERVICES AGREEMENT

Relating to the Provision of HIP Services

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DATE OF SUPPLY AGREEMENT

PARTIES

- 1) **Estate Agent A** whose principal office is at (**“Client”**); and
- 2) **HIPS ASSURED LIMITED** whose registered office is at 340 Melton Road, Leicester LE1 3RL (**“HAL”**).

INTRODUCTION

- A** The Client is wanting to offer a Home Information Pack (HIP) for residential property sales and ancillary services.
- B** The Client wishes to appoint HAL as a preferred supplier of the Client
- C** HAL has agreed to provide and The Client has agreed to purchase HIPs on the terms set out below.

IT IS AGREED THAT:

1 DEFINITIONS

- 1.1** In this agreement the following words shall have the following meanings unless the context requires otherwise.

“Commencement Date” means 1 June 2007

“Fees” means the fees for the Services provided by HAL (as may be amended from time to time in accordance with the provisions of clause 7.3 or by agreement in writing between the parties from time to time).

“HAL member” means a wholly owned subsidiary of HAL

“HIP” means a complete Home Information Pack in line with government legislation as it is laid down from time to time

“HIP Instruction” means any instruction received by HAL from The Client requesting the provision of a HIP

“Intellectual Property Rights” means patents, rights in inventions, know-how, trade marks, service marks, rights in designs, trade or business names, copyright (including rights in computer software), database rights and topography rights (whether or not any of these is registered and including applications for registration of any such thing) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world.

“Panel” means the panel comprised of third party component suppliers agreed in writing between HAL and The Client from time to time.

“Panel Management Services” means the panel management services as set out in clauses 4.3, 4.4 and/or 5(g) and/or the Schedule (as may be amended from time to time by agreement in writing between the parties).

“Panel Member” means a member of the Panel.

“Quarter” means the 3 month period commencing on the Commencement Date and each subsequent 3 month period.

“Service Levels” means the service levels set out in the Schedule.

“Services” means the provision of HIPs by HAL in accordance with the terms of this agreement.

“The Client” means The Client and any holding company or companies of The Client and any subsidiary or subsidiaries of The Client or any such holding company. Holding company and subsidiary shall be defined according to Section 736 of the Companies Act 1985 (as amended).

“The Client Representative” means such person as The Client may from time to time nominate in writing to HAL.

“Term” means the period from the Commencement Date with a break period by either party serving not less than 1 months written notice.

“Territory” means England, Wales, Scotland and Northern Ireland (as may be amended from time to time by agreement in writing between the parties) excluding in area postcodes where the valuation is not paid for by The Client.

“Year” means the 12 month period commencing on the Commencement Date and each subsequent 12 month period or such shorter period (if any) commencing on the Commencement Date or a subsequent anniversary of the Commencement Date and ending on the date of termination of this agreement.

- 1.2 The headings in this agreement are for information only and do not affect its interpretation.
- 1.3 Unless the context otherwise so requires references to The Client and HAL include their permitted successors and assigns.
- 1.4 In the case of any conflict or ambiguity between any provision in the body of this agreement and any provision contained in the Schedule the provision in the body of this agreement shall take precedence.

2 DURATION

This agreement shall commence on the Commencement Date and (Subject to the provisions of clause 11) shall continue for the Term.

3 APPOINTMENT

- 3.1** (Subject to the provisions of this clause 3 and of clause 4.3) during the term of this agreement The Client appoints HAL as a provider of HIPs in the Territory to The Client.
- 3.2** Nothing in this agreement shall prevent The Client from instructing other HIP providers to perform HIPs where:
- a) the person who wishes to sell a property via the Client has already commissioned a HIP on the property and it is felt appropriate by The Client (acting reasonably) to use such HIP; or
 - b) HAL is unable or unwilling to supply the same
 - c) The Client has opted to retain more than one HIP supplier.
- 3.3** Nothing in this agreement shall prevent The Client from selecting its preferred conveyancer for the house sale or purchase and HAL shall not render a referral fee to The Client for enabling access to the pack electronically for that preferred conveyancer.

4 SUPPLY OF SERVICES

- 4.1** From the Commencement Date HAL will provide to The Client the Services in accordance with the terms of this agreement.
- 4.2** During the term of this agreement HAL shall provide and The Client shall purchase such Services as may be requested by The Client from time to time in accordance with the terms of this agreement.
- 4.3** HAL shall act as agent for The Client in passing any components of the HIP to any Panel Member the Client might reasonably request and the contract for the delivery of such component shall be between The Client and such Panel Member. For the avoidance of doubt HAL shall not be responsible in any way for any component parts of the HIP provided by any Panel Member (save where due to HAL's acts or omissions) and The Client shall indemnify HAL in relation to any loss, liability, cost or expense suffered or incurred by HAL as a result of or in connection with any component provided by any Panel Member to the Client, subject to HAL giving The Client the sole conduct of the defence of any claim or action in relation thereto, and providing The Client (at cost and expense) such assistance as The Client shall reasonably require in the conduct of such defence.
- 4.4** Any information (including but not limited to energy performance certificates, title documents and searches provided as part of the Services) and any Intellectual Property Rights created by HAL as a result of the provision of the Services shall vest in and belong to HAL absolutely. HAL grants The Client the non-exclusive, irrevocable, royalty free right to use such information and such Intellectual Property Rights for the term of this agreement and for the purposes only of exercising the rights of The Client under this agreement. Further, HAL grants The Client the non-exclusive irrevocable royalty free right

to use such information (including any copyright and/or database rights in such information) after termination or expiry of this agreement. The Client may sub-license or transfer such rights to any third party with the prior written consent of HAL (such consent not to be unreasonably withheld or delayed)

5 HAL's OBLIGATIONS

HAL shall:

- a) Appoint an account manager approved by The Client (acting reasonably) to liaise with The Client Representative on a regular basis to review the performance of this agreement and to receive and use all reasonable endeavours to resolve any reasonable complaints;
- b) Act reasonably, in good faith and in accordance with generally accepted standards of good practice (if any);
- c) Comply with all acts, laws and regulation relevant to the provider of the Services;
- d) Observe all reasonable written instructions issued by The Client from time to time;
- e) During the term of this agreement and for not less than 6 years thereafter maintain Professional Indemnity Insurance in accordance with HAL's Insurance Requirements;
- f) Promptly on request provide The Client any information and documents The Client reasonably requires to verify HAL's compliance with this agreement; and
- g) (subject to The Client's instructions to withhold any amounts in dispute) on behalf of The Client and in accordance with the terms of the relevant Panel Member's appointment, pay to each Panel Member the Fees in relation to the components provided by such Panel Member.

6 THE CLIENT'S OBLIGATIONS

The Client shall:

- a) Permit HAL to, within reason, appoint additional Panel Members to ensure HAL is able to comply with its obligations and duties under this agreement;
- b) Act reasonably, in good faith and in accordance with generally accepted standards of good practice (if any);
- c) Comply with all relevant acts, laws and regulations;
- d) Promptly provide HAL with such details, documents and information as HAL may reasonably request or require from time to time or enable it to perform its duties and obligations under this agreement;
- e) Provide such advice and assistance as may be reasonably necessary from time to time to enable HAL to comply with its duties and obligations under this agreement and all acts, laws and regulations relevant to HAL; and
- f) Give to HAL reasonable notice of any event which may result in any material change in the anticipated volume of HIP Instructions referred to HAL in accordance with the terms of this agreement.

7 FEES AND PAYMENT

- 7.1** In consideration of HAL providing the Services in accordance with the terms of this agreement The Client shall (subject to clause 7.8) pay to HAL the Fees within 150 days of the date of receipt of HAL's invoice. For the avoidance of doubt, the Fees shall be paid to HAL irrespective of whether The Client recovers such Fees from its customers.
- 7.2** HAL shall submit to The Client (monthly in arrears) an invoice and statement detailing the Fees due for payment for completed Services provided by HAL (and to this extent the invoice shall constitute a valid and appropriate VAT invoice) in the immediately preceding month. Each monthly statement shall contain all relevant information reasonably required by The Client for reconciliation purposes. HAL shall send each such invoice and statement to The Client at the address set out in this agreement or to such other party and/or address as The Client may notify to HAL in writing from time to time.
- 7.3** After six months of trading between the parties the Client agrees to transfer to payment by direct debit and shall furnish without unreasonable delay such information as is required to satisfy this transfer.
- 7.4** The Fees shall be fixed for a period of 12 months from the Commencement Date and shall continue to be effective thereafter unless and until revised in accordance with the provisions of clause 7.4.
- 7.5** After the expiry of the period of 12 months from the Commencement Date either party may require that the parties meet (on reasonable notice) to agree revised Fees (such agreement not to be unreasonably withheld or delayed) if appropriate. If the parties do not at such meeting agree the Fees the Fees shall be fixed at a sum which is equivalent to the mid-point of the fees charged in the previous 12 months by 5 similar HIP service providers operating in the market. For the avoidance of doubt each party may require not more than 1 such meeting in any consecutive period of 6 months. The revised Fees will only take effect 4 weeks after the date of any such meeting.
- 7.6** The Fees shall be exclusive of value added tax which shall be payable at the prevailing rate currently 17.5%.
- 7.7** If any sum payable under this agreement is not paid on the due date HAL reserves the right to suspend services without notice and to charge interest from the due date for payment to the actual date of payment in full (whether before or after judgement) at a rate of 4% above the base rate of the Bank of England from time to time in force.
- 7.8** If either party disputes in good faith any sum shown in any invoice, as being payable by it, it shall make payment of any undisputed amount within 150 days of receipt of the invoice and shall give notice of the amount in dispute and the reasons for dispute to the other party. Any sums subsequently agreed or

awarded in relation thereto shall be payable within 30 days of such agreement or award.

8 WARRANTY

8.1 HAL warrants and undertakes to The Client that the HIP Services will be performed with reasonable skill and care by appropriately qualified or experienced persons.

8.2 HAL warrants and undertakes to The Client that the HIP Instructions performed by HAL will be performed:

- a) in accordance with the Housing Act 2004 and its amendments from time to time;
- b) in accordance with the Property Codes Compliance Board and their best practice HIP Code of Conduct;
- c) in accordance with any reasonable guidance notes which may be issued to HAL by The Client from time to time; and

8.3 HAL Warrants and undertakes to The Client :

- a) that it will own or have the right to use in accordance with this agreement all Intellectual Property Rights required to be used by it pursuant to this agreement;
- b) that so far as HAL is aware the provision of the Services will not cause either HAL or any member of The Client to infringe the Intellectual Property Rights or any other rights of any third party; and
- c) that so far as HAL is aware The Client's use of the Intellectual Property Rights licensed to it pursuant to this agreement will not cause either HAL or any member of The Client to infringe the Intellectual Property Rights or any other rights of any third party.

8.4 Subject to clause 13, if HAL at any time fails to perform the Services, or any of them, in accordance with this agreement then, without prejudice to The Client's rights and remedies set out in this agreement The Client may in respect of the Services in question require HAL, at HAL's own expense, to remedy such default or re-perform the relevant Services within such reasonable time as may be specified by The Client, without further charge to The Client for such Services.

9 LIABILITY

9.1 Nothing in this agreement shall exclude or limit the liability of HAL for death or personal injury resulting from HAL's negligence, fraudulent misrepresentation or any breach of any undertaking as to title, quiet possession or freedom from encumbrance implied by law.

9.2 In any event (but without prejudice to clause 9.1) HAL's liability in relation to its performance of or failure to perform the Services in contract, tort (including negligence or breach of statutory duty) or otherwise in relation to HAL's performance of or failure to perform the Services arising by reason of or in

connection with this agreement shall be limited to the greater of £1,000,000 (one million pounds) or the amount received by HAL for the claim under its insurance policy covering such risks provided that nothing in this agreement shall oblige HAL to claim upon any insurance which it holds. The Client acknowledges that delay in notifying any claim may prevent HAL recovering any money under such policy.

9.3 The provision of this clause 9 shall survive the termination or expiry (for whatever reason) of this agreement.

10 DATA PROTECTION

10.1 Each party shall in connection with this agreement;

- a) comply with the Data Protection Act 1998 (“**Act**”) and all applicable privacy laws and regulations in the relevant jurisdiction (together the “**Data Protection Laws**”) and
- b) not, by any act or omission, put the other party in breach of any of the Data Protection Laws.

10.2 Where, in connection with this agreement, HAL acts as The Client’s Processor (as defined in the Act) and processes Personal Data (as defined in the Act) for and on behalf of The Client HAL shall:

- a) process that Personal Data only on the instructions and with the prior written approval of the The Client;
- b) take reasonable steps to ensure the reliability of its employees, agents and sub-contractors (“representatives”) who may have access to Personal Data and ensure that such representatives are equally bound by the obligations imposed on HAL as Processor;
- c) not disclose the Personal Data to any third party other than in accordance with the instructions of the relevant member of The Client or otherwise as requested or approved by the Data Controller;
- d) provide prompt assistance and information to The Client in connection with all subject access requests received from Data Subjects (as defined in the Act) and any complaints relating to the Personal Data which HAL processes on The Client’s behalf;
- e) implement appropriate technical and organisational measures to protect that personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the Processing involves the transmission of data over a network, and against all other unlawful forms of Processing;
- f) upon written request from The Client from time to time inform the relevant member of The Client of the measures it has taken to comply with the provisions of clause 10.2 (e) and shall at its own cost implement any further steps that are necessary for compliance with the Act; and
- g) return all Personal Data together with all copies in any media in HAL’s possession, power or control to the relevant member of The Client promptly upon request and in any event upon termination or expiry of this agreement.

11 TERMINATION

11.1 Either party may give notice to the other party terminating this agreement with immediate effect if:

- a) the other party is in material breach of any of its obligations under this agreement and (if such breach is remediable) fails to remedy such breach within 30 days of that party being notified of and required to remedy such breach;
- b) the other party is insolvent or unable to pay its debts within the meaning to the following:
 - i) if a voluntary arrangement is made with the creditors of the other party or it becomes subject to an administration order;
 - ii) if the other party goes into liquidation except for the purposes of a solvent amalgamation or reconstruction and in such manner that the resulting company effectively agrees to be bound by or assume the obligations imposed on that part under this agreement;
 - iii) if the other party ceases to carry on its business; or
 - iv) if a receiving order is made against it or if an order is made or a resolution is passed for the winding up of the other party;
 - v) if a receiving order is made for the appointment of an administrator to manage the affairs, business and property of the other party;
 - vi) if an encumbrancer takes possession or a receiver or administrative receiver is appointed over any of the other parties assets or undertaking;
 - vii) if circumstances arise which entitle the Court or a creditor to appoint a receiver or manager or which entitle the Court to make a winding up order;
 - viii) if the other party takes or suffers any similar or analogous action in consequence of debt;
- c) any circumstance relied on by the other party for the purposes of clause 13.1 continues for more than 60 days; or
- d) any regulatory or legislative change (after the Commencement Date) shall substantially and adversely affect the notifying party's ability to take full advantage of the terms of this agreement and the parties (acting in good faith) are unable to agree such amendments as may be reasonably necessary to mitigate such effect.

11.2 For the purposes of clause 11.1(a) "material breach" shall include but not be limited to continuing and/or persistent breaches which when aggregated together have a significant adverse impact on that party's performance of its obligations under this agreement.

11.3 The Client may give notice to HAL terminating this agreement with immediate effect if there is a material change in the ownership or control of HAL which in

The Client's reasonable opinion is likely either to materially adversely affect HAL's ability to perform the services in accordance with the terms of this agreement or materially adversely affect The Client's reputation in the market place.

- 11.4 The termination or expiry of this agreement (howsoever arising) shall be without prejudice to any rights or liabilities of the parties accrued at the date of termination or expiry (as appropriate).
- 11.5 The termination or expiry of this agreement shall not affect or prejudice any provision which is expressly or by implication provided to come into force on or continue in effect after such termination or expiry.
- 11.6 On the termination or expiry of this agreement (howsoever arising) neither party shall make any announcement or contact any customer in relation to such termination or expiry without the consent of the other party (such consent not to be unreasonably withheld or delayed).

12 CONFIDENTIALITY

Both HAL and The Client shall each keep confidential and shall not without the prior written consent of the other disclose to any third party that the parties have entered into, or any details of this agreement, or any technical or commercial information or other information of a confidential nature that it has acquired from the other as a result of any discussions, negotiations and other communications between them as a result of this agreement.

13 FORCE MAJEURE

- 13.1 Neither party shall be liable to the other or be deemed to be in breach of this agreement by reason of any delay in performing or failure to perform any of its obligations under this agreement to the extent such delay nor failure was beyond that party's reasonable control.
- 13.2 Any party claiming to be unable to perform its obligations under this agreement in accordance with clause 13.1 must immediately notify the other party of the nature and extent of the circumstances in question.

14 GENERAL

- 14.1 No delay or omission on the part of either party to this agreement in exercising any right, power or remedy provided by law or under this agreement shall impair such right, power or remedy or operate as a waiver of it.
- 14.2 The single or partial exercise of any right, power or remedy provided by law or under this agreement by either party shall not preclude any other or further exercise of such or any other right, power or remedy.

- 14.3** The rights, powers and remedies provided in this agreement are cumulative and not exclusive of any rights, powers and remedies provided by law.
- 14.4** This agreement and the documents referred to in it constitute the entire agreement between the parties with respect to the subject matter and this agreement supersedes all prior agreements and undertakings between the parties with respect to such subject matter. This agreement may not be varied, unless such variation shall have been expressly agreed in writing by a duly authorised representative of each of the parties to this agreement.
- 14.5** The invalidity, illegality or unenforceability of any provision of this agreement shall not affect the other provisions.
- 14.6** The parties intend that The Client's rights and remedies under this agreement may be enforced by any member of The Client pursuant to s1(1)(a) of the Contracts (Rights of Third Parties) Act 1999.
- 14.7** The parties reserve the right pursuant to s2(3)(a) of the Contracts (Rights of Third Parties) Act 1999 to rescind or vary this agreement without the consent or any member of The Client.
- 14.8** Subject to clauses 14.6 and 14.7, the operation of the Contracts (Rights of Third Parties) Act 1999 is hereby excluded and the parties may amend, vary or terminate this agreement without the consent of any other person.
- 14.9** Any notice required or authorised to be given under this agreement shall be in writing and sent by personal delivery or pre-paid first class letter to the relevant address as set out at the head of this agreement or to such other address as may from time to time be notified in writing to the other party.
- 14.10** Any notice shall be deemed to have been duly given as follows:
- a) if sent by personal deliver, upon delivery to the address at the relevant party; or
 - b) if sent by first class letter, two days after the date of posting.
- 14.11** In proving the giving of such notice, it shall be sufficient to prove that the letter containing the notice was properly addressed and, as the case may be, delivered at the address personally or put into the post as pre-paid post.
- 14.12** This agreement may be executed in any number of counterparts but shall not be effective until each party has executed at least one counterpart. Each counterpart shall constitute an original of this agreement, but all the counterparts shall together constitute but on and the same instrument.
- 14.13** (Subject to clauses 14.14, 14.15 and 14.16) neither party shall without the prior written consent of the other assign, notate, transfer or otherwise dispose of this agreement or its rights or obligations or any part of them under this agreement.

- 14.14** HAL shall be entitled to without consent to assign, notate, transfer or otherwise dispose of this agreement or its rights or obligations or any part of them under this agreement to any company which is a member of HAL provided always that if such company ceases to be a member of HAL HAL shall promptly procure that this agreement is vested in a company within HAL.
- 14.15** The Client shall be entitled without consent to assign, notate, transfer or otherwise dispose of this agreement or its rights or obligations or any part of them under this agreement to any company which is a member of The Client provided always that if such company ceases to be a member of The Client The Client shall promptly procure that this agreement is vested in a company within The Client.
- 14.16** HAL shall be entitled to sub-contract any of its duties and obligations under this agreement to any member of the HAL Group or any independent third party where The Client (acting reasonably) has approved such third party.
- 14.17** Nothing in this agreement shall create or be deemed to create a partnership or the relationship of employer/employee between the parties.
- 14.18** This agreement is governed by and construed in accordance with English Law and each party agrees to submit to the non-exclusive jurisdiction of the English courts.
- 14.19** This agreement may be executed in any number of counterparts and by the parties on separate counterparts each of which when so executed shall be an original but all counterparts shall together constitute one and the same instrument.

IN WITNESS of which the parties have signed this agreement on the date set out above.

HIP Fee Scale

Standard HIP

Definition:

Fully compliant Home Information Pack with Personal Searches

On-line access

2 x printed copies delivered to Introducing Source

- 1 Freehold £350 + VAT.
- 2 Leasehold £460 + VAT + Management Company Disbursements incurred in retrieving required documents.

Enhanced HIP

Definition:

Fully compliant Home Information Pack with Official Searches

On-line access

2 x printed copies delivered to Introducing Source

- 1 Freehold £250 + VAT, plus the cost of the Official Local Authority and Drainage and Water Searches.
- 2 Leasehold £360 + VAT + Management Company Disbursements incurred in retrieving required documents, plus the cost of the Official Local Authority and Drainage and Water Searches.

HIP PRODUCTION SERVICES

Maintenance Services

- 3 Implement audit procedures to review the quality and accuracy of components submitted by members of the Panel.
- 4 Promptly consider applications from firms The Client proposes to add to the Panel and make recommendations to The Client on these applications.
- 5 Maintain an up to date database of members of the Panel, together with contact names, addresses and telephone numbers and facsimile numbers, such database to be provided on request to The Client.

SERVICE LEVELS

	Service Level Agreement (“SLA”)	Target No. of Cases To Be Returned Within SLA	Minimum No. of Cases To Be Returned Within SLA
Energy Performance Certificates	4 Working Days	80%	50%
Searches	14 Working Days	70%	50%
Completed HIP	21 Working Days	70%	50%

Note: The SLA is measured from the date that HAL is instructed by The Client. Working day 1 is the day of receipt of instructions.

SIGNED by
For and on behalf of
Estate Agent A

SIGNED by
For and on behalf of
HIPS ASSURED LIMITED